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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Taxation
Virginia Administrative Code (VAC) Chapter citation(s)	23 VAC 10-390
VAC Chapter title(s)	Virginia Soft Drink Excise Tax
Date this document prepared	November 13, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Not Applicable

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Virginia Code § 58.1-203 authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation ("the Department"). Subtitle I of Title 58.1 of the *Code of Virginia* sets forth the taxes administered by the

Department of Taxation, which include the Soft Drink Excise Tax imposed under Va. Code §§ 58.1-1700, et seq.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No viable alternatives to the regulation governing the administration of the tax were identified. The regulation is the least burdensome alternative to provide clarification of the Soft Drink Excise Tax statutes and set out administrative policies of the Department as provided in rulings of the Tax Commissioner.

The regulation was last amended in 2018 to conform to current law and administrative procedures regarding the collection of the tax, and to strike provisions that are no longer accurate due to changes in the law. The affected provisions dealt with the collection of the tax, return due dates and extensions, and penalties and interest that may apply for failure to timely file or pay the amount of tax due. There have been no change in the Soft Drink Excise Tax statutes subsequent to the amendments.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Virginia Beverage Association	The regulations are working appropriately	Agreed

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The Department of Taxation has determined that the Soft Drink Excise Tax regulation is necessary for the administration of the tax and thus necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

As the regulation was updated in 2018 and there have been no subsequent legislative changes to the statutes imposing the tax, the Department of Taxation has determined that the Soft Drink Excise Tax regulation should be retained as is without making changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Under Va. Code § 58.1-1703, the Soft Drink Excise Tax is administered by the Department of Taxation in the same manner as the state income tax, as provided by rules and regulations promulgated by the Tax Commissioner. Accordingly, the regulation continues to be necessary to clarify the administration of the tax. The Department has received no complaints or comments from the public concerning the regulation. The regulation is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated in 2018 and was amended to reflect statutory changes since the regulation was last amended. The Department is not aware of any technology, economic conditions, or other factors that have changed in the area affected by the regulation. As the regulation is concise and up-to-date, the regulation has no economic impact on any businesses, including small businesses.