2007 - 2011
Virginia
Retail Sales and Use Tax
Expenditure Study

Volume 1, Number 2

Issued Pursuant to *Va*. *Code* § 58.1-609.12

Exemptions Studied:

- Food Stamp and WIC Voucher Purchases (*Va*. *Code* § 58.1-609.10 (5))
- School Lunches and Textbooks *(Va*. *Code* § 58.1-609.10 (8))

December 1, 2008

VIRGINIA
RETAIL SALES AND USE TAX EXPENDITURE STUDY

Volume 1, Number 2

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Secretary of Finance

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December 2008

This report provides a detailed analysis of the following Retail Sales and Use Tax exemptions:

- Food Stamp and WIC Voucher Purchases (*Va*. *Code* § 58.1-609.10 (5))

- School Lunches and Textbooks *(Va*. *Code* § 58.1-609.10 (8))

Future reports will cover other subgroups of the Retail Sales and Use Tax exemptions provided by *Va*. *Code* §§ 58.1-609.10 and 58.1-609.11.

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We appreciate the assistance provided by the numerous individuals who made it possible for us to complete this report. However, the study staff is responsible for devising the methodology used in calculating the revenue impacts and performing the analysis of the various exemptions. Thus, those who assisted us or provided information are not accountable for any of the results or analytical conclusions presented in this report.

We express a special thank you to all contributing schools, colleges and private sector entities, which provided answers to surveys, and all contributing government entities, which provided the remaining data.

We hope that the study will be a valuable tool to policymakers in formulating the Retail Sales and Use Tax policies of the Commonwealth of Virginia, as well as to policymakers in other states.

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EXECUTIVE SUMMARY

Authorization for Study

Pursuant to *Va*. *Code* § 58.1-609.12, the Department of Taxation ("TAX") is charged with the responsibility of determining the fiscal, economic and policy impact of each of the Retail Sales and Use Tax exemptions provided for by *Va*. *Code* §§ 58.1-609.10 and 58.1-609.11 and reporting such findings to the chairmen of the House and Senate Finance Committees no later than December 1 of each year.

Subgroups of these exemptions are to be reviewed in periodic cycles and reports issued on a rotating basis in accordance with a schedule determined by the Tax Commissioner. When the reports have been completed for all of the subgroups, TAX is required to repeat the process beginning with the subgroup of exemptions for which a report was made in 2007. No exemption shall be analyzed more frequently than once every five years.

There are nineteen exemption categories scheduled to be studied during the 2007-2011 period, and every five-year period thereafter. This is the second report of the 2007-2011 series and includes a detailed analysis of exemptions that pertain to:

- *Va. Code* § 58.1-609.10(5) - Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

- *Va. Code* § 58.1-609.10(8) - School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

This report includes detailed information on the policy and fiscal impacts of these two exemptions, as well as the apparent rationale for these exemptions and their legislative history. This report also includes a comparison of the Virginia exemptions with the sales tax structures of other states, with particular emphasis placed on a comparison with the exemptions provided in contiguous states.

Retail Sales and Use Tax Exemption for Food Stamps and WIC Vouchers

Under § 1505 of the Food Security Act of 1985 (P.L. 99-198), the federal government prohibits states from imposing a state and local sales tax on food stamp purchases as a condition for participation in the Food Stamp program. Congress passed the law to provide tax relief to those requiring assistance to purchase food and to preserve the purchasing power of food stamp recipients. For example, a 2.5 percent sales tax imposed on all food purchases would reduce the real buying power for recipients in the grocery store to the equivalent of 97.5 percent of the value of the coupon. Congress believed that protecting the buying power of food stamp recipients was paramount to concerns that the limitation interfered with state taxing powers. Similar provisions were included in the Special Supplemental Food Program for WIC Vouchers in the School Lunch and Child Nutrition Amendment of 1986.

Prior to this exemption, purchases with food stamps and WIC vouchers were considered taxable, as food stamps and WIC vouchers represented consideration (same as cash) paid for the purchase of tangible personal property. This exemption was passed in 1986 in response to the federal legislation.

Retail Sales and Use Tax Exemption for School Lunches and Textbooks

The exemption for school lunches and the exemption for school textbooks sold by local school boards and nonprofit institutions of learning were included in the original exemptions to the sales and use tax enacted in 1966. In 1980, the college textbook exemption was expanded to exempt certified textbook sales by private vendors because many colleges rely on private vendors to stock and sell required textbooks. In 2008, effective January 1, 2010, the General Assembly expanded the textbook exemption to exempt certified textbook sold to students of any institution of learning, not just nonprofit institutions.

Prior to July 1, 1994, *Va. Code* § 22.1-251 required local school boards to provide required textbooks and workbooks free of charge to children whose parents were financially unable to furnish them, but permitted the school board to rent or sell textbooks to other students. This exemption eliminated the administrative burden on the schools of maintaining separate records for sales/leases of textbooks and donations of textbooks to needy children. Effective July 1, 1994, *Va. Code* § 22.1-251 was amended to require that each school board provide, free of charge, textbooks and workbooks required for course instruction for all children attending public schools. Therefore, *Va. Code* § 22.1-251 made the exemption for textbook sales by a school board obsolete.

Evaluation of Retail Sales and Use Tax Exemption Expenditures

Unlike expenditures under the budget process, sales tax exemptions tend to remain in effect indefinitely. These tax exemptions raise profound questions of public policy. Because these exemptions are the equivalent of a subsidy, it is vital to determine to which endeavors limited government resources should be allocated.

Expenditures are provisions such as exclusions, exemptions, preferential tax rates, deductions, deferrals or credits that are designed to provide an economic incentive for a certain activity or provide financial assistance in the form of tax relief to taxpayers in certain situations. The impact of exemption expenditures produces fiscal impacts that constitute forgone tax revenue. For purposes of this study, exemption expenditures are measured by the reduced tax collections, instead of the normal expenditure authorized through the legislative appropriation process.

Below is a summary of the revenue impact of the sales and use tax exemptions for the two exemptions that are the subject of Volume 2 of the Virginia Retail Sales and Use Tax Expenditure Study.

Purchases Made with Food Stamps and WIC Vouchers

Table 1 reflects the total state and local Retail Sales and Use Tax expenditure resulting from the exemption for purchases made with Food Stamps and Table 2 reflects the total state and local Retail Sales and Use Tax expenditure resulting from the exemption for purchases made with WIC Vouchers.

Table 1: Total State and Local Sales Tax Expenditure Resulting from Purchases Made with Food Stamps

Fiscal Year	Revenue Impact
2005	$12,013,138
2006	$12,918,998
2007	$13,501,513
2008	$14,641,811
2009	$15,695,613*
2010	$16,666,745*

*Projected using the Damped Trend Exponential Smoothing (from SAS Time Series Forecasting System).

Table 2: Total State and Local Sales Tax Expenditure Resulting from Purchases Made with WIC Vouchers

Fiscal Year	Revenue Impact
2005	$1,992,849
2006	$2,021,857
2007	$2,211,040
2008	$2,431,586
2009	$2,474,588*
2010	$2,615,800*

*Projected using the Log Linear Trend (from SAS Time Series Forecasting System).

School Lunches and Textbooks

Table 3 reflects the total state and local Retail Sales and Use Tax expenditure resulting from exempting the sale of school lunches and Table 4 reflects the total state and local Retail Sales and Use Tax expenditure resulting from exempting the sale of textbooks.

Table 3: Total State and Local Retail Sales and Use Tax Expenditure Resulting from Exempting the Sale of School Lunches

Fiscal Year	Revenue Impact
2005	$9,755,995
2006	$10,478,460
2007	$10,888,357
2008	$11,506,476*
2009	$12,072,339*
2010	$12,638,063*

* Projected using the Logarithmic Regression Model and the Exponential Regression Model (from Excel Forecasting System).

Table 4: Total State and Local Retail Sales and Use Tax Expenditure Resulting from Exempting the Sale of Textbooks

Fiscal Year	Revenue Impact
2005	$8,600,104
2006	$9,044,529
2007	$9,231,055
2008	$9,589,273*
2009	$9,904,366*
2010	$10,219,303*

* Projected using the Logarithmic Regression Model (from Excel Forecasting System).

Nonprofit Entities

Under the authority requiring this study, TAX is restricted from studying any exemption provided by *Va. Code* § 58.1-609.10 or *Va. Code* § 58.1-609.11 more frequently than once every five year. However, *Va. Code* § 58.1-609.11 requires an annual report on entities seeking a nonprofit exemption. Given the importance of this exemption for nonprofit entities provided by *Va. Code* § 58.1-609.11, TAX will include in each volume of the Sales and Use Tax Expenditure Study an estimate of the forgone revenue attributable to the nonprofit entity exemption. This estimate is based on information reported to TAX by nonprofit entities seeking to obtain a new or renewed exemption under *Va. Code* § 58.1-609.11. No nonprofit entities were surveyed to obtain this data. The revenue analysis below is derived from estimates prepared by TAX's Nonprofit Exemption Unit for their annual fiscal impact analysis of nonprofit organizations. Each report examines the foregone revenue from purchases made by nonprofit organizations that renewed their exemption and nonprofit organizations that applied for a new exemption during the prior fiscal year. See Appendix 4 for the full report.

Table 5 sets forth TAX's estimate of the total annual state and local Retail Sales and Use Tax revenue impact of the Nonprofit Entity Exemption.

Table 5: State and Local Retail Sales and Use Tax Expenditure Resulting from Purchases Made by Nonprofit Organizations.

Fiscal Year	Revenue Impact
2008	$ 213,829,116
2009	$ 224,097,191*
2010	$ 227,684,987*

***** Projected using the Consumer Pricing Index for All Urban Consumers (CPI-U).

INTRODUCTION

Study Mandate

Pursuant to *Va*. *Code* § 58.1-609.12, enacted by House Bill 2852 (*Acts of Assembly* 2005, Chapter 853) and amended by House Bill 1370 (*Acts of Assembly* 2006, Chapter 559), the Department of Taxation ("TAX") is charged with the responsibility of determining the fiscal, economic and policy impact of each of the Retail Sales and Use Tax exemptions provided for by *Va*. *Code* §§ 58.1-609.10 and 58.1-609.11 and report such findings to the chairmen of the House and Senate Finance Committees no later than December 1 of each year.

Subgroups of these exemptions are to be reviewed in periodic cycles and reports issued on a rotating basis in accordance with a schedule determined by the Tax Commissioner. When the reports have been completed for each subgroup, TAX is required to repeat the process beginning with the subgroup of exemptions for which a report was made in 2007. No exemption shall be analyzed more frequently than once every five years. There are nineteen exemption categories scheduled to be studied during the 2007-2011 period, and every five-year period thereafter.

TAX plans to study these exemptions as follows:

Citation	Volume	Year	Exemption
Code of Va. § 58.1-609.11	1	2007	Nonprofit Entities
Code of Va. § 58.1-609.10(15)	1	2007	Donations Withdrawn from Inventory
Code of Va. § 58.1-609.10(16)	1	2007	Nonprofit churches
Code of Va. § 58.1-609.10(5)	2	2008	Food Stamp and WIC Purchases
Code of Va. § 58.1-609.10(8)	2	2008	School Lunches and Textbooks
Code of Va. § 58.1-609.10(9)	3	2009	Medicines and Drugs
Code of Va. § 58.1-609.10(11)	3	2009	Dialysis Drugs and Supplies
Code of Va. § 58.1-609.10(14)	3	2009	Nonprescription Drugs and Nonprescription Drug Samples
Code of Va. § 58.1-609.10(17)	4	2010	Medical Products and Supplies Purchased by Medicaid Recipients
Code of Va. § 58.1-609.10(10)	4	2010	Durable Medical Equipment
Code of Va. § 58.1-609.10(12)	4	2010	Motor Vehicle Equipment for Handicapped Persons
Code of Va. § 58.1-609.10(13)	4	2010	Communication Equipment for Handicapped Persons

Code of Va. § 58.1-609.10(1)	5	2011	Domestic Consumption of Heating Fuels
Code of Va. § 58.1-609.10(2)	5	2011	Occasional Sales
Code of Va. § 58.1-609.10(3)	5	2011	Purchases for Taxable Lease
Code of Va. § 58.1-609.10(4)	5	2011	Delivery of Property outside VA
Code of Va. § 58.1-609.10(6)	5	2011	Property Purchased for Maintenance of Nuclear Power Plants outside VA

This is the second report of the 2007-2011 study and includes a detailed analysis of exemptions that pertain to:

- *Va. Code* § 58.1-609.10(5) - Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

- *Va. Code* § 58.1-609.10(8) - School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

This report includes detailed information on the policy and fiscal impacts of these two exemptions, as well as the apparent rationale for the exemptions and their legislative history. This report also includes a comparison of the Virginia exemptions with the sales tax structures of other states, with particular emphasis placed on a comparison with the exemptions provided in contiguous states.

The goal of the Sales and Use Tax Expenditure Study is to provide a more complete picture of the revenue impact and policy issues surrounding each of the exemptions contained in the Retail Sales and Use Tax Act. Great care has been taken to provide the most accurate and comprehensive analysis possible. It is our hope that legislators, government officials, and other decision makers will find this report a useful tool in the formulation of public policy decisions on the goals to be furthered by the use of the Commonwealth's revenue resources.

Tax Expenditures Defined

Tax expenditures are provisions in the tax code, such as exclusions, exemptions, preferential tax rates, deductions, deferrals or credits that are designed to provide an economic incentive for a certain activity or provide financial assistance in the form of tax relief to taxpayers in certain situations. The tax expenditure concept recognizes that the fiscal impact of a tax provision is similar to the outlay of a direct expenditure. One of the major differences between a tax expenditure and a direct expenditure is that the "cost" is measured by reduced tax collections, instead of by the level of expenditure authorized through the normal legislative appropriation process.

Tax expenditure studies are used more and more frequently as a method of ensuring that tax expenditures are subject to periodic review in a manner similar to direct budget expenditures. Because tax expenditures may escape periodic review, they generally remain in effect indefinitely, with only limited review as to whether they are accomplishing a worthwhile public purpose in a cost-effective manner. However, since tax expenditures are designed to accomplish certain public goals that otherwise might be met through direct expenditures, it is only reasonable to apply to tax expenditures a review and analysis similar to that provided for direct expenditures.

The Virginia Retail Sales and Use Tax incorporates numerous tax expenditures, which, taken together, substantially reduce the revenues that could potentially be generated by the tax. This study focuses on one type of tax expenditure, Retail Sales and Use Tax miscellaneous exemptions. The periodic review of such exemptions that will be undertaken in the Retail Sales and Use Tax Expenditure Study provides a comprehensive tool for evaluating the revenue, economic and policy impact of each exemption. This type of review is particularly relevant considering the number of entities that have obtained sales and use tax exemptions since the enactment of the tax in 1966.

Exemption Analysis Criteria

As mandated by *Va. Code* § 58.1-609.12, eight criteria are used to analyze the fiscal, economic and policy impact of each exemption:

- Revenue Impact – Estimate the state and local retail sales and use tax foregone as a direct result of the exemption.

- Beneficiaries of the Exemption – Identify taxpayers or industries that actually benefit from the exemption. This includes identifying those persons who benefit directly from an exemption. It will also entail identifying the extent to which the benefit is passed on to others, such as customers or suppliers, who are considered to benefit indirectly from the exemption.

- Direct or Indirect Government Assistance **–** Identify the direct or indirect state budgetary assistance received by taxpayers or industries. Where possible, the federal budgetary assistance received by these groups will also be identified.

- Other States – Compare Virginia exemptions to the tax systems of other states and the District of Columbia which impose a sales, use or receipts tax. This will include determining whether the other taxing jurisdictions have exemptions or other tax expenditures analogous to the Virginia exemption. Particular attention will be given to the tax preferences in the states bordering Virginia, which include the District of Columbia, Kentucky, Maryland, North Carolina, Tennessee, and West Virginia.

- External Mandates **–** Identify whether the exemption is required as the result of constitutional, judicial, or statutory mandates, either federal or state.

- Other State and Local Tax Burdens **–** Ascertain whether the taxpayer, industry, property, or service, is subject to other Virginia state taxes.

- Similar Taxpayers **–** Identify taxpayers or industries that do not enjoy the exemption, even though they are similar in nature to taxpayers or industries that do enjoy the exemption.

- Other Criteria **–** Focuses on other relevant issues that are unrelated to the first seven criteria. Such issues might include the impact of state regulation, state or local license fees, or local taxes upon exempt taxpayers and industries, and the special impact that an exemption or the lack thereof may have upon a particular locality or region of the state.

<u>Revenue Analysis Methodology</u>

Since tax expenditures are not funded by direct appropriations, but rather by uncollected revenues, their costs are difficult to determine and often not directly recorded. The goal of the revenue estimating process is to quantify (as accurately as possible) the costs of each sales and use tax exemption in terms of foregone state and local revenues. What follows is a general outline of the methodology used to determine the estimates and the inherent limitations placed upon those estimates.

In each case, the most accurate and complete sources of data were utilized. Forecasts and changes in taxpayer behavior were taken into account when appropriate and feasible. The revenue analysis in this study considers only the immediate and direct impact that elimination of an exemption would have on sales and use tax revenue. Not included is an examination of possible subsequent indirect effects on, for example, location decisions and employment in the affected industry due to imposition of the tax. An analysis of such secondary effects is beyond the scope of this study.

The information for this study was received from a number of sources. Other government entities provided the Food Stamp, WIC and public school lunches data.

The remaining information, private school lunches and textbooks data, was obtained through surveys.

A few general guidelines were used in devising and conducting the surveys:

- Surveys were used only when no acceptable alternative sources of the information existed.
- Survey forms were made as simple as possible to minimize the time and effort required for completion.
- Attempts were made to identify and notify an industry representative before devising a survey to get input and cooperation.

Study Limitations

For several reasons, the reader should exercise caution in interpreting the estimates of fiscal impacts found in this report. Some of the major limitations of the estimating methodologies are discussed below.

The goal of the revenue estimating process is to quantify the costs of each sales tax exemption in terms of foregone state and local revenues. Because tax expenditures are funded not by direct appropriations, but rather by uncollected revenues, their costs normally are not directly recorded. Thus, it is important to understand the methodology used to determine the estimates and the inherent limitations placed upon those estimates.

The forecasts generated for Food Stamps, WIC and School Lunches may be understated. The current economic downturn may push Food Stamps and WIC above historical levels. Additionally, rising food prices will cause the price of school lunches to increase for students and school employees.

The analyses of textbooks and lunches sold at private schools are limited by the population of organizations surveyed as well as the reliability and accuracy of survey responses. The limitations associated with our study of textbook sales mainly pertain to unavailable figures. Some colleges were not able to separate textbook sales from other sales of tangible personal property at their bookstore.

The for-profit institution of learning survey population was very small and the response rate among these schools was also very low. In addition, many of the for-profit institutions of learning give their textbooks to students or include them in tuition rates. Textbooks that are given to students or included as part of tuition do not have the same impact on tax expenditures. Because the expansion of the textbook exemption to include students attending for-profit institutions of learning does not become effective until January 1, 2010, many of the colleges affected by this legislation currently have a different method of distributing textbooks than they will when the new exemption takes effect. TAX expects some for-profit institutions to begin selling textbooks directly to students in separate transactions. Therefore, considering the limitations mentioned above, the fiscal year 2010 analysis of textbook sales does not include for-profit institutions of learning. The fiscal year 2010 analysis must be examined with the understanding that it does not provide a complete or entirely accurate analysis of the scope of the exemption.

Report Organization

This report contains a detailed analysis of the exemptions pertaining to:

- *Va. Code* § 58.1-609.10(5) - Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

- *Va. Code* § 58.1-609.10(8) - School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

A summary of each exemption category is provided. For each category, the following information is provided:

- Authorization: The legal authorization for the exemptions, including the text of the statute.

- Exemption Summary: A description of the exemption.

- Rationale: The background of the enactment of the exemptions, including the legislative history and information on any revisions, in addition to the rationale for the exemption.

- Methodology: A description of how TAX studied the exemptions, including sampling methods, and survey techniques.

- Revenue Analysis: A summary of the estimated foregone state and local revenues as a result of the exemptions.

- Beneficiaries: A description of taxpayers and entities which benefit from the exemptions.

- Direct or Indirect Government Assistance: Explanation of any direct or indirect government assistance that inures to the beneficiaries of the exemptions.

- State Comparisons: A comparison of the Virginia exemptions with those in other states, particularly contiguous states.

- External Mandates: A description of any statutory, constitutional, or judicial mandates that are related to, or impacted by, the exemptions.

- Other State and Local Tax Burdens: Identification of any other state and local tax burdens on the beneficiaries of these exemptions.

- Similar Taxpayers: A discussion of those taxpayers and entities which are similar, but do not benefit from the exemptions.

- Other Criteria: If available, any other issues relevant to the exemptions. This category may be excluded if there is no added information.

FOOD STAMPS AND WIC VOUCHERS EXEMPTION

AUTHORIZATION

Va. Code § 58.1-609.10(5) - *Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.* (Enacted 1986)

EXEMPTION SUMMARY

This provision grants an exemption from the Retail Sales and Use Tax tangible personal property purchased with:

- food coupons issued under the Food Stamp Program, or
- drafts issued through the Virginia Supplemental Food Program for Women, Infants, and Children (WIC).

Generally, any food or food product for home consumption, except alcoholic beverages, tobacco and hot foods and hot food products ready for immediate consumption, may be purchased with food stamps or WIC vouchers and, therefore, may be purchased exempt from Virginia sales tax.

RATIONALE

The exemption was enacted to meet requirements established under federal law to enable Virginia to continue to participate in the programs.

LEGISLATIVE HISTORY

Federal: Under § 1505 of the Food Security Act of 1985 (P.L. 99-198), the federal government prohibited states from imposing a state and local sales tax on food stamp purchases as a condition for participation in the Food Stamp program. Congress passed the law to provide tax relief to those requiring assistance to purchase food and to preserve the purchasing power of food stamp recipients. For example, a 2.5 percent sales tax imposed on all food purchases would reduce the real buying power for recipients in the grocery store to the equivalent of 97.5 percent of the value of the coupon. Congress believed that protecting the buying power of food stamp recipients was paramount to concerns that the limitation interfered with state taxing powers. Similar provisions were included in the Special Supplemental Food Program for WIC Vouchers in the School Lunch and Child Nutrition Amendment of 1986.

Congress believed that allowing a state to impose sales tax on food stamp and WIC Voucher purchases would serve as an indirect federal subsidy to those state and local governments imposing a sales tax on such purchases by transferring revenues from the federal government to state and local government at the expense of low income persons. Consequently, Congress required states that collected sales tax on purchases made under the Food Stamp and WIC Voucher programs to exempt such sales from their taxes in order to receive food stamp and WIC funding.

Virginia: Prior to this exemption, purchases with food stamps and WIC vouchers were considered taxable, as food stamps and WIC vouchers represented consideration (same as cash) paid for the purchase of tangible personal property. This exemption was enacted in 1986 in response to the federal legislation.

METHODOLOGY

Food Stamp payment data for state fiscal years 1997 through 2007 were obtained from the Virginia Department of Social Services' 2008 Annual Statistical Report. Food Stamp payment data for state fiscal year 2008 were obtained from the participation reports. WIC voucher data for state fiscal years 2002 through 2008 were obtained from the Virginia Department of Health, which administers the program in Virginia. The tax rate applied to items bought with food stamp coupons or WIC vouchers was 2.5 percent.

REVENUE ANALYSIS

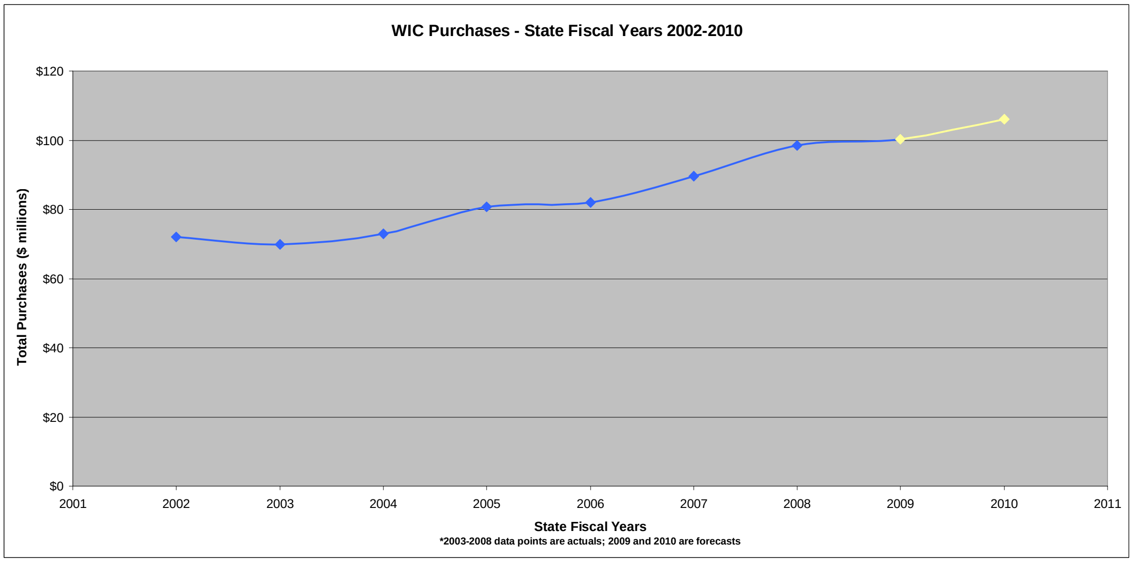
Based on TAX's data obtained from the Department of Social Services and the Department of Health, it is estimated that state and local revenues would increase by approximately $18,170,200 in fiscal year 2009 and $19,282,544 in fiscal year 2010 if the exemption is repealed.

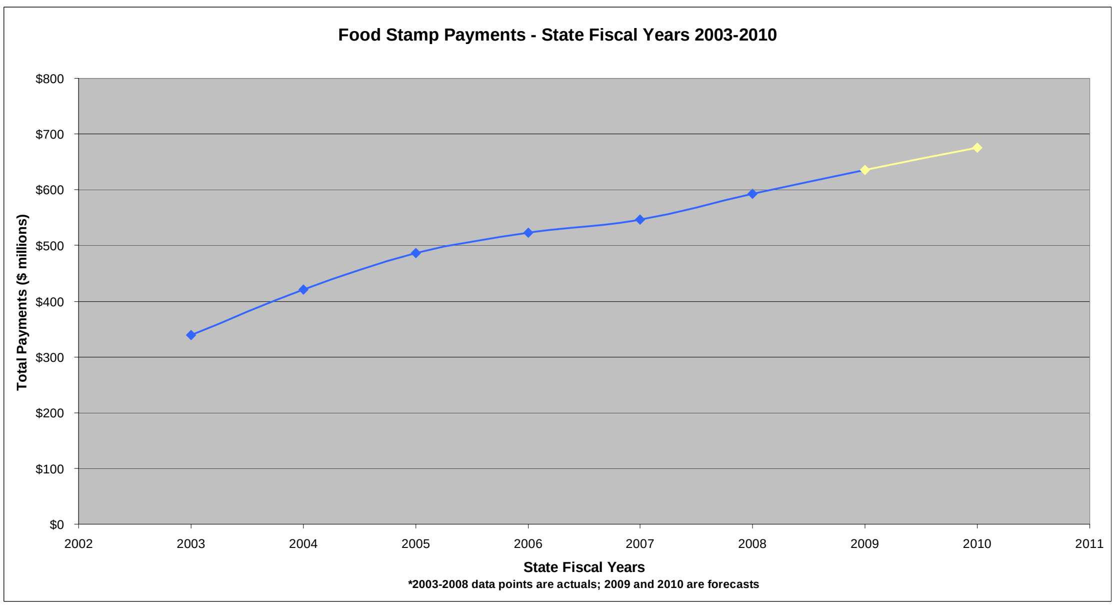
Table 1: Total State and Local Sales Tax Expenditure Resulting from Purchases Made with Food Stamps and WIC Vouchers

Fiscal Year	Food Stamps	WIC	Total
2005	$12,013,138	$1,992,849	$14,005,987
2006	$12,918,998	$2,021,857	$14,940,855
2007	$13,501,513	$2,211,040	$15,712,553
2008	$14,641,811	$2,431,586	$17,073,397
2009	$15,695,613*	$2,474,588*	$18,170,201
2010	$16,666,745*	$2,615,800*	$19,282,545

*Food stamp data projected using the Damped Trend Exponential Smoothing (from SAS Time Series Forecasting System).

*WIC data projected using the Log Linear Trend (from SAS Time Series Forecasting System).





The 1999 Acts of Assembly, Chapters 366 and 466, gradually reduced the state's sales tax on food for domestic consumption by 0.5 percent per year beginning January 1, 2000 to 1.5 percent on and after April 1, 2003. However, each incremental reduction in food tax was contingent on (1) actual general fund state revenues exceeding the official general fund estimates by at least one percent in the fiscal year immediately preceding the next proposed reduction; (2) the general fund revenues, excluding transfers, exceeding the prior fiscal year's actual revenues by at least five percent; (3) the Governor, forecasting in December prior to the next proposed reductions, that general fund revenues be sufficient to cover appropriations for the fiscal years under the then current appropriations act; and (4) the Governor, forecasting in December prior to the next proposed reduction, that revenues needed to cover "car tax relief" for the next fiscal year not exceed 8.5 percent of total general fund revenues available for appropriations. In 2000, all of the qualification were met and the rate was reduced from 3.5 percent to 3 percent. No further reductions occurred until 2005 when the 2005 Acts of Assembly, Chapters 487 and 521, reduced the rate from 3 percent to 1.5 percent, effective July 1, 2005. These rate reductions, however, do not affect the local sales tax rate on such food products.

Food for home consumption by humans, as defined under the Food Stamp Act of 1977, 7 U.S.C. § 2012, qualifies for the reduced sales tax rate. Food that is not considered "eligible food" under the federal food stamp program continues is fully taxable at the 5 percent rate. The definition includes most staple grocery food items and cold prepared foods packaged for home consumption. Specifically excluded from the definition of food for home consumption are alcoholic beverages, tobacco, and prepared hot foods sold for immediate consumption on and off the premises. The reduced sales and use tax rate does not apply to seeds and plants which produce food for human consumption.

If Virginia were to collects sales tax on purchases made with food stamps or WIC vouchers, it would lose its federal funding under these programs. In fiscal year 2007, Virginia received a total of $715,296,427 in federal funding for these programs.

BENEFICIARIES

Persons purchasing food for home consumption through these programs benefit to the extent that the cost of food is less due to the exemption.

Participation in the Food Stamp Program and the WIC Program is limited to those households whose incomes and other financial resources are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households where all members receive benefits under Temporary Assistance for Needy Families (TANF), or Supplemental Security Income (SSI) benefits for the aged, blind, or disabled, pursuant to the Social Security Act, are eligible to participate in the food stamp program and WIC program. An income test is used to determine the eligibility of other households.

DIRECT OR INDIRECT GOVERNMENT ASSISTANCE

Virginia offers a $300 income tax credit for each individual and dependent in a family whose Virginia adjusted gross income does not exceed 100 percent of the poverty guideline amount. If all members of a household receive benefits under TANF or SSI, they are also eligible to participate in the food stamp and/or WIC programs. Therefore, recipients of food stamps and WIC mostly likely qualify for and receive TANF or SSI. In addition, recipients of food stamps and WIC also may qualify for Medicaid. Medicaid provides assistance in paying for medical care for those individuals who have limited income and resources.

In fiscal year 2007, Virginia received a total of $623,591,426 for the Food Stamp Program from the federal government. This includes $547,000,000 for food costs, which are funded 100 percent by the federal government and $76,591,426 for administrative costs. Virginia also received a total of $91,705,001 for the WIC program from the federal government in fiscal year 2007. This includes $63,827,339 for the food costs and $27,877,671 for administration. Federal funding in fiscal year 2007 under the two programs for Virginia totaled $715,296,427.

STATE COMPARISONS

Of the 46 sales tax jurisdictions:

32 generally exempt food purchases for domestic consumption;

8 tax food purchases for domestic consumption at the general rate; and

6 tax food purchases for domestic consumption at a reduced rate, including Virginia.

All 46 sales tax jurisdictions exempt purchases made with food stamps. All but one jurisdiction exempt purchases made with WIC vouchers.

See Appendix 1 for a state-by-state comparison with other taxing jurisdictions.

Of the states that border Virginia, Tennessee and West Virginia exempt food stamp and WIC voucher purchases but tax other food purchases. The District of Columbia, North Carolina, Kentucky and Maryland exempt food purchased for home consumption.

EXTERNAL MANDATES

This exemption is required by federal statute in order for Virginia to continue to receive federal funding for the food stamp and WIC programs. However, Virginia remains free to reject the prohibition on taxing food stamp and WIC voucher purchases and forego the federal funding.

OTHER STATE AND LOCAL TAX BURDENS

Qualifying individuals may be subject to federal and state income taxes and are subject the sales and use tax on purchases of tangible personal property generally.

Qualifying individuals may be subject to local property taxes. Elderly and handicapped individuals, however, may be entitled to total or partial exemption or relief from local property taxes on motor vehicles and to real property tax relief.

Under *Va. Code* §§ 58.1-3833 and 58.1-3840, localities are prohibited from imposing a meals tax on tangible personal property purchased with food stamps or WIC vouchers.

SIMILAR TAXPAYERS

Persons purchasing food in any manner other than through food stamps and WIC vouchers do not qualify for the exemption.

SCHOOL LUNCHES AND TEXTBOOKS EXEMPTION

AUTHORIZATION

Va. Code § 58.1-609.10(8) - *School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.* (Enacted 1966; Amended 1980 and 2008)

EXEMPTION SUMMARY

This provision exempts from the retail sales and use tax: (i) government subsidized school lunches sold and served to pupils and school employees; (ii) school textbooks sold by local school boards and institutions of learning; and (iii) certified textbooks sold by the college or private vendors to students of institutions of learning.

School Lunches

The exemption for school lunches extends to lunches subsidized by any level of government when sold and served to pupils and employees of public and private schools. The ingredients for providing lunches, and equipment and supplies purchased by a school for its use in preparing and serving such lunches, and which become the property of the school, may be purchased exempt of the tax under other exemption categories using certificates of exemption.

School Textbooks

This exemption provides that the tax does not apply to school textbooks sold by a local school board or its authorized agency.

School textbooks for use by students attending a college or other institution of learning are also exempt when sold by: (i) the institution itself or (ii) any other dealer, provided such textbooks are certified by the institution as required course materials for the student. The exemption is limited to textbooks required by the institution of learning and does not extend to such items as laboratory equipment, personal computers, physical education uniforms, school supplies, etc.

RATIONALE

The exemption for school lunches and the exemption for school textbooks sold by local school boards and institutions of learning were included in the original exemptions to the sales and use tax enacted in 1966. The school lunch exemption was apparently enacted to prevent the imposition of the sales tax on meals for which full or partial reimbursement was provided by government at any level.

The school textbook exemption was enacted to reduce the overall cost of attending school or college by reducing the cost of required textbooks. The exemption from the sales and use tax available to the state and its political subdivisions, and to institutions of learning, generally applies to purchases of tangible personal property by the state and its political subdivisions, and by institutions of learning, when such purchases are paid for out of public funds or the institution's own funds. However, sales by these entities, as well as sales by private schools and colleges, are generally taxable. This exemption provides an exception to the rule by exempting sales of subsidized school lunches and school textbooks sold by local school boards and institutions of learning.

LEGISLATIVE HISTORY

Prior to July 1, 1994, *Va. Code* § 22.1-251 required local school boards to provide required textbooks and workbooks free of charge to children whose parents were financially unable to furnish them, but permitted the school board to rent or sell textbooks to the other students. This exemption eliminated the administrative burden on the schools of maintaining separate records for sales/leases of textbooks and donations of textbooks to needy children. Effective July 1, 1994, *Va. Code* § 22.1-251 was amended to require that each school board provide, free of charge, textbooks and workbooks required for course instruction for all children attending public schools. Therefore, *Va. Code* § 22.1-251 made the exemption for textbook sales by a school board obsolete.

The exemption for school lunches and the exemption for school textbooks sold by local school boards and institutions of learning were included in the original exemptions to the retail sales and use tax enacted in 1966. In 1980, the textbook exemption was expanded to exempt certified textbook sales by private vendors because many colleges rely on private vendors to stock and sell required textbooks. In 2008, effective January 1, 2010, the General Assembly expanded the textbook exemption to include certified textbook sales for students of any institution of learning, not just nonprofit institutions.

METHODOLOGY

The Virginia Department of Education provided data regarding the total sales of meals and a la carte items sold to students and employees at public K through 12 schools in Virginia. In addition, surveys were mailed to 26 non-profit private schools that participate in USDA school nutrition programs, the list was provided by the USDA. An estimate was formulated for both private and public schools, and then combined to create the final revenue estimate. The tax rate applied to these items was 5 percent, the levy on prepared foods.

Surveys gathering data regarding school lunch programs were sent to the private, nonprofit schools on the list provided by the USDA. The school lunch survey asked each non-profit private school in the dataset for three pieces of information: how many teachers were employed by the institution, how many students were enrolled, and what were the total sales of school meals and snacks sold to K through 12 students and employees exempt of the sales tax. The schools were asked for total sales for fiscal years 2005 through 2007 or for the last three years which total sales were available. Twenty-six surveys were sent to non-profit private schools receiving a subsidy for school lunches. Twenty were returned (76.92 percent). The response was grown proportionally and then added to the total sales for Virginia public schools.

In order to obtain information regarding school textbook sales, surveys were mailed to a number of educational institutions. The State Council of Higher Education of Virginia (SCHEV) provided the list of public and community colleges in Virginia. SCHEV also provided the list of private schools certified to operate in Virginia. The schools that provide books as part of tuition/class costs were not surveyed. It was found that the SCHEV certification process is at least as stringent as the criteria in TAX's regulation on institutions of learning, 23 VAC 10-210-4020. The SCHEV list was combined with TAX's list of colleges that have obtained non-profit exemption certificates.

The textbook survey of Virginia colleges and universities asked for the number of full-time equivalent students, exempt textbook sales from the school's bookstore for fiscal years 2005 through 2007, and the average cost of textbooks per student per year. In order to verify the accuracy of the textbook sales, the number of full-time students and the average cost of textbooks were asked. Additionally, TAX asked for the school bookstore's market share and whether or not there were other competing private vendors selling tax-exempt textbooks. For the schools that listed a private vendor, a survey was sent asking for the total sales of tax-exempt textbooks to students. This was done in order to verify the school bookstore's market share. Fifty-one out of 87 surveys (58.62%) were returned. The 87 institutions surveyed represent the entire population.

See the attachments for the survey instruments.

REVENUE ANALYSIS

The increase in state and local revenues that would result from repeal of the school lunch sales exemption is estimated to be $12,072,339 in fiscal year 2009 and $12,638,063 in fiscal year 2010. In 2009, for the school lunch exemption, public schools account for approximately $12,029,036 and private schools account for $43,303. In 2010, for the school lunch exemption, public schools account for approximately $12,592,207 and private schools account for $45,856. See Table 1.

Table 1: Total State and Local Sales Tax Expenditure Resulting from Sales of School Lunches at Public and Private Schools

Fiscal Year	Public School Lunches	Private School Lunches	Total
2009	$12,029,036*	$43,303*	$12,072,339
2010	$12,592,207*	$45,856*	$12,638,063

* Public school lunch data projected using the Logarithmic Regression Model (from Excel Forecasting System).

* Private school lunch data projected using the Exponential Regression Model (from Excel Forecasting System).

Information obtained from a survey of public and nonprofit, private institutions of higher learning indicates that the repeal of the textbook sales exemption would increase state and local revenues by $9,904,366 in fiscal year 2009 and $10,219,303 in fiscal year 2010.

Therefore, data obtained from surveys indicates that repeal of the school lunches and textbook exemption would increase state and local revenues by a total of $22,857,366 in fiscal year 2010. See Table 2.

Table 2: Total State and Local Sales Tax Expenditure Resulting from Sales of School Lunches and Textbooks

Fiscal Year	School Lunches	School Textbooks	Total
2005	$9,755,995	$8,600,104	$18,356,099
2006	$10,478,460	$9,044,529	$19,522,989
2007	$10,888,357	$9,231,055	$20,119,412
2008	$11,506,476	$9,589,273	$21,095,749
2009	$12,072,339*	$9,904,366*	$21,976,705
2010	$12,638,063*	$10,219,303*	$22,857,366

*Projected using the Logarithmic Regression Model and the Exponential Regression Model (from Excel Forecasting System).

BENEFICIARIES

Beneficiaries of this exemption include pupils and employees of schools who purchase school lunches subsidized by government. Students attending public and nonprofit institutions of learning, also benefit from the textbook exemption. Beginning January 1, 2010, students attending for-profit institutions of learning will benefit from the exemption. Because local school boards are currently required to provide students with textbooks free of charge, there are no beneficiaries of the exemption for textbooks sold by local school boards.

DIRECT OR INDIRECT GOVERNMENT ASSISTANCE

The federal government offers an educator expense deduction for up to $250 for teachers and other educators to deduct the cost of books, supplies, equipment and software used in the classroom.

The federal government also offers multiple income tax credits and deductions for tuition and textbooks costs. The HOPE credit allows a credit for up to $1,650 for qualified educational expenses paid for each eligible student with the proceeds of a loan. The lifetime learning credit allows a credit of up to $2,000 for qualified educational expenses for all students enrolled in eligible educational institutions. There are also income tax deductions for student loan interest and tuition and fees. During the first weekend in August of each year, Virginia provides a Clothing and School Supplies Sales Tax Holiday, which allows any person to purchase qualifying items exempt of the Virginia sales tax.

The 1993 General Assembly amended *Va. Code* § 22.1-251 to require local school boards to provide textbooks and workbooks, required for courses of instruction, free of charge to each child attending public schools. The 1993 amendment became effective on July 1, 1994 provided that the General Assembly appropriated sufficient funds to cover the state share of the textbooks and workbooks. Sufficient funds were appropriated by the 1994 General Assembly, and the 1993 amendment thus became effective on July 1, 1994.

School lunches are subsidized at both the state and federal levels. The National School Lunch and Breakfast Program, administered by the USDA, provides reimbursement on a sliding scale based on parents' ability to pay for the children's lunches. Additionally, under this program, schools receive some reimbursement for all school lunches sold to students which meet program guidelines. Both public and nonprofit, private schools may participate, and thus are entitled to reimbursement. School employee lunches are not reimbursed under this program. In fiscal year 2007, Virginia received a total of $221,435,382 from federal school nutrition programs.

The Commonwealth also appropriates $5,801,932 annually in state funds to schools divisions for lunches. This annual appropriation is the amount required by the USDA for Virginia to participate in the federal School Nutrition Programs. The money is distributed as a flat rate reimbursement, prorated to each school division based on the number of meals served in the prior year. A la carte items, such as sandwiches, are not eligible for reimbursement. As with the federal program, employee lunches are not eligible for state reimbursement. Beginning in fiscal year 2006, Virginia distributed breakfast incentive funding to school divisions. The state funded breakfast incentive program is available to any school division as a reimbursement for breakfast meals served that are in excess of the baseline established by the Department of Education. In fiscal year 2008, $1,060,971 was distributed to school divisions.

State financial assistance to localities for textbooks totaled $67.2 million in fiscal year 2007 and $67.1 million in fiscal year 2008. Local systems are reimbursed for the Commonwealth's share of an average of textbook costs per pupil, $100.28 in fiscal year 2008. Funds for the reimbursement are derived from a combination of the General Fund, special source funds and federal trust funds.

STATE COMPARISONS

The application of the exemption to school lunches and school textbooks under Virginia law is similar to that of the majority of the other 46 taxing jurisdictions.

School Lunches

Like Virginia, the other 45 sales tax jurisdictions exempt from their sales and use tax public school lunches sold or served to pupils, while 31 other sales tax jurisdictions, including Maryland, North Carolina, Tennessee and West Virginia, also exempt lunches sold to school employees. Of Virginia's bordering states, the District of Columbia and Kentucky tax school lunches sold to school employees. Nine states, including Kentucky, only exempt school lunches sold or served to pupils at public and non-profit schools. Thirty-nine states exempt school lunches sold and served to pupils at public colleges and 35 states exempt school lunches sold and served to pupils at private post-secondary institution, with 8 requiring that the private college be a non-profit institution.

See Appendix 2 for a state-by-state comparison with other taxing jurisdictions.

Textbook Sales by Local School Boards

The sale of textbooks by local school boards is exempt from the sales and use tax in 30 other states, including all of Virginia's bordering jurisdictions except Maryland. The majority of states provide textbooks to students free of charge, like Virginia.

See Appendix 2 for a state-by-state comparison with other taxing jurisdictions.

Sales of Certified Textbooks

Like Virginia, 26 other states exempt from their sales and use tax school textbooks sold by the school for use by students attending a public institution of learning. Twenty-four other states exempt school textbooks sold by the institution for use by students attending a nonprofit institution of learning. Sixteen other states exempt school textbooks sold by the school for use by students attending a for-profit institution of learning.

Like Virginia, 16 other states exempt school textbooks sold by a private vendor for use by students attending a public institution of learning. Fourteen other states exempt school textbooks sold by a private vendor for use by students attending a nonprofit institution of learning. Eleven other states exempt school textbooks sold by a private vendor for use by students attending a for-profit institution of learning.

Nevada exempts textbook sales made by either the school or private vendors, but limits the exemption to sales made within the University of Nevada system. The states that distinguish between exempt and taxable based on a public, nonprofit, or for-profit basis are Arizona, Hawaii, Illinois, Iowa, Kentucky, New Mexico, Ohio, and Utah.

Of Virginia's bordering jurisdictions, Tennessee and West Virginia exempt sales of required textbooks if sold by the school itself or by private vendors. North Carolina and Maryland tax all textbook sales. Kentucky exempts sales of required textbooks sold by the school itself or by private vendors if sold for public or nonprofit institutions of learning.

See Appendix 3 for a state-by-state comparison with other taxing jurisdictions.

EXTERNAL MANDATES

Originally, *Va*. *Code* § 22.1-251 required school boards to provide free textbooks and workbooks only to needy children. Most school boards provided textbooks free of charge to all children in grades 1 through 7, and provided textbooks for grades 8 through 12 through a textbook rental system. A few school boards provided textbooks free of charge. As amended in 1993, effective 1994, this section now requires school boards to provide free textbooks and workbooks to each child attending public schools.

OTHER STATE AND LOCAL TAX BURDENS

Sales of meals and snacks to students and employees not subsidized by government are subject to the sales and use tax and any local meals tax. Teachers are subject to federal and state income taxes. School supplies and items other than certified textbooks purchased by a student are generally subject to the sales and use tax.

SIMILAR TAXPAYERS

Private bookstores and restaurants are subject to local property taxes at varying rates. Also, such businesses may be subject to the Business, Professional and Occupational License (BPOL) tax at varying rates in the localities which levy such tax. Private bookstores and restaurants are also subject to federal and state income taxes.

APPENDIX 1

State	Groceries Generally	WIC Vouchers	Food Stamps
Alabama	T	E	E
Arizona	E	E	E
Arkansas	T*	E	E
California	E	E	E
Colorado	E	E	E
Connecticut	E	E	E
DC	E	E	E
Florida	E	E	E
Georgia	E	E	E
Hawaii	T	E	E
Idaho	T	E	E
Illinois	T*	E	E
Indiana	E	E	E
Iowa	E	E	E
Kansas	T	T	E
Kentucky	E	E	E
Louisiana	E	E	E
Maine	E	E	E
Maryland	E	E	E
Massachusetts	E	E	E
Michigan	E	E	E
Minnesota	E	E	E
Mississippi	T	E	E
Missouri	T*	E	E
Nebraska	E	E	E
Nevada	E	E	E
New Jersey	E	E	E
New Mexico	E	E	E
New York	E	E	E
North Carolina	E	E	E
North Dakota	E	E	E
Ohio	E	E	E
Oklahoma	T	E	E
Pennsylvania	E	E	E
Rhode Island	E	E	E

State	Groceries Generally	WIC Vouchers	Food Stamps
South Carolina	E	E	E
South Dakota	T	E	E
Tennessee	T	E	E
Texas	E	E	E
Utah	T*	E	E
Vermont	E	E	E
Virginia	T*	E	E
Washington	E	E	E
West Virginia	T*	E	E
Wisconsin	E	E	E
Wyoming	E	E	E
Total Exempt	32	45	46

* Indicates that the state imposes the tax on grocery items at a reduced rate.

The following states do not have a general sales and use tax: Alaska, Delaware, Montana, New Hampshire and Oregon.

APPENDIX 2

State	Lunch Sold to Students				Lunches Sold to Employees				Comments
	Public k-12	Private k-12	Public College	Private College	Public k-12	Private k-12	Public College	Private College	
Alabama	E	E*	T	T	T	T	T	T	
Arizona	E	E	E	E	E	E*	T	E	Nonprofit only.
Arkansas	E	T	T	T	E	T	T	T	Nonprofit only.
California	E	E	E	E	T	T	T	T	
Colorado	E	E	E	E	E	E	E	E	
Connecticut	E	E	E	E	E	E	E	E	
DC	E	E	E	E	E	E	E	E	
Florida	E	E*	T	T	E	E	T	T	
Georgia	E	E*	E	E*	E	E*	E	E*	Nonprofit only.
Hawaii	E	E	E	T	E	E	E	T	Nonprofit only.
Idaho	E	T	E	T	T	T	T	T	
Illinois	E	E	E	E	E	E	E	E	
Indiana	E	E	E	E	E	E	T	T	
Iowa	E	E	E	E	T	T	T	T	
Kansas	E	E	T	T	E	E	T	T	
Kentucky	E	E*	E	E*	T	T	T	T	
Louisiana	E*	E*	E*	E*	E*	E*	E*	E*	Nonprofit only.
Maine	E	E	E	E	E*	E*	E	E	Suspended 7/30/09
Maryland	E	E	E	E	E	E	T	T	Teachers only.
Massachusetts	E	E	E	E	T	T	T	T	

State	Lunch Sold to Students				Lunches Sold to Employees				Comments
	Public k-12	Private k-12	Public College	Private College	Public k-12	Private k-12	Public College	Private College	
Michigan	E	E	E	E	T	T	T	T	
Minnesota	E	E	E	E	E	E	T	T	
Mississippi	E	E	E	E	T	T	T	T	
Missouri	E	E*	E	E*	E	E*	E	E*	
Nebraska	E	E	E	E	T	T	T	T	Nonprofit only.
Nevada	E	E	E	E	E	E	E	E	
New Jersey	E	E	E	E	T	T	T	T	
New Mexico	E	T	E	T	E	T	E	E	
New York	E	E	E	E	T	T	T	T	
North Carolina	E	E	E	E	E	E	T	T	
North Dakota	E	E*	E	E*	E	E*	E	E*	
Ohio	E	E	E	E	T	T	T	T	Nonprofit only.
Oklahoma	E	E*	E	E*	E	E*	E	E*	
Pennsylvania	E	E	E	E	E	E	E	E	Nonprofit only.
Rhode Island	E	E*	E	E*	E	E*	E	E*	
South Carolina	E	E*	T	T	T	T	T	T	Nonprofit only.
South Dakota	E	T	E	T	E	T	E	T	Nonprofit only.
Tennessee	E	E	E	E	E	E	E	E	
Texas	E	E	T	T	E	E	T	T	
Utah	E	E	E	E	E	E	E	E	
Vermont	E	E	E	E	E	E	E	E	

State	Lunch Sold to Students				Lunches Sold to Employees				Comments
	Public k-12	Private k-12	Public College	Private College	Public k-12	Private k-12	Public College	Private College	
Virginia	E	E*	E	E*	E	E*	T	T	
Washington	E	E	E	E	T	T	T	T	Nonprofit only.
West Virginia	E	E	T	T	E	E	T	T	
Wisconsin	E	E	E	E	E	E	T	T	
Wyoming	E	E	E	E	E	E	E	E	
Total Exempt	46	42	39	35	32	29	20	19	

The following states do not have a general sales and use tax: Alaska, Delaware, Montana, New Hampshire and Oregon.

APPENDIX 3

State	Textbooks by School Board	Public College		Private, Nonprofit College		Private, For Profit College	
		Sold by School	Sold by Private Vendor	Sold by School	Sold by Private Vendor	Sold by School	Sold by Private Vendor
Alabama	E	T	T	T	T	T	T
Arizona	E	E	E	T	T	T	T
Arkansas	T	T	T	T	T	T	T
California	T	T	T	T	T	T	T
Colorado	T	T	T	T	T	T	T
Connecticut	E	E	E	E	E	E	E
DC	T	T	T	T	T	T	T
Florida	E	T	T	T	T	T	T
Georgia	T	E	T	E	T	E	T
Hawaii	E	E	T	E	T	T	T
Idaho	T	T	T	T	T	T	T
Illinois	E	E	T	E	T	T	T
Indiana	E	T	T	T	T	T	T
Iowa	E	E	E	E	E	T	T
Kansas	T	T	T	T	T	T	T
Kentucky	E	E	E	E	E	T	T
Louisiana	T	T	T	T	T	T	T
Maine	T	E	T	E	T	E	T
Maryland	T	T	T	T	T	T	T
Massachusetts	E	E	E	E	E	E	E
Michigan	E	T	T	T	T	T	T

State	Textbooks by School Board	Public College		Private, Nonprofit College		Private, For Profit College	
		Sold by School	Sold by Private Vendor	Sold by School	Sold by School	Sold by Private Vendor	Sold by School
Minnesota	E	E	E	E	E	E	E
Mississippi	E	E	E	E	E	E	E
Missouri	E	E	E	E	E	E	E
Nebraska	T	T	T	T	T	T	T
Nevada	E	E	E	T	T	T	T
New Jersey	E	E	E	E	E	E	E
New Mexico	E	E	T	E	T	T	T
New York	E	E	E	E	E	E	E
North Carolina	E	T	T	T	T	T	T
North Dakota	E	E	E	E	E	E	E
Ohio	E	E	E	E	E	T	T
Oklahoma	E	E	T	E	T	E	T
Pennsylvania	E	E	T	E	T	E	T
Rhode Island	E	E	T	E	T	E	T
South Carolina	E	E	E	E	E	E	E
South Dakota	T	T	T	T	T	T	T
Tennessee	E	E	E	E	E	E	E
Texas	T	T	T	T	T	T	T
Utah	E	E	T	E	T	T	T
Vermont	T	T	T	T	T	T	T
Virginia	E	E	E	E	E	E	E
Washington	T	T	T	T	T	T	T

State	Textbooks by School Board	Public College		Private, Nonprofit College		Private, For Profit College	
		Sold by School	Sold by Private Vendor	Sold by School			Sold by School
West Virginia	E	E	E	E	E	E	E
Wisconsin	E	T	T	T	T	T	T
Wyoming	E	E	T	E	T	E	T
Total Exempt	31	27	17	25	15	18	12

The following states do not have a general sales and use tax: Alaska, Delaware, Montana, New Hampshire and Oregon.

***Va. Code* § 58.1-609.10. Miscellaneous exemptions.**

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.

7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised, edited, reformatted or copied documents, including but not limited to documents stored on or transmitted by electronic media, to its client or to third parties in the course of the professional's rendition of services to its clientele.

8. School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof;

and school textbooks sold for use by students attending a nonprofit college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his professional practice, regardless of whether such practice is organized as a sole proprietorship, partnership, or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise exempt under this section; and samples of prescription drugs and medicines and their packaging distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of § 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed to be the user or consumer of all such medicines and drugs.

10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment and devices, and related parts and supplies specifically designed for those products; and insulin and insulin syringes, and equipment, devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when such items or parts are purchased by or on behalf of an individual for use by such individual. Durable medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or injury, and (iv) is appropriate for use in the home.

11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

12. Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.

13. Special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate when such equipment is prescribed by a licensed physician.

14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and proprietary medicines distributed free of charge by the manufacturer, including packaging materials and constituent elements and ingredients.

b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision shall not apply to cosmetics.

15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code or (ii) the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church membership while meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools. The exemption for such churches shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid advertising and are used in carrying out the work of the church; gifts including food for distribution outside the public church building; food, disposable serving items, cleaning supplies and teaching materials used in the operation of camps or conference centers by the church or an organization composed of churches that are exempt under this subdivision and which are used in carrying out the work of the church or churches; and property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment; and building materials installed by the church, and for which the church does not contract with a person or entity to have installed, in the public church buildings used in carrying out the work of the church and its related ministries, including, but not limited to worship services; administrative rooms; and kindergarten, elementary, and secondary schools.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by

a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and olive pits.

SURVEY INSTRUMENT (COLLEGES)

Please provide the name of your institution, mailing address, and a contact name, telephone number, and email address.			
Please answer questions 1, 3, 4, 5, and 6 with data from the most recently completed fiscal year. Specify period covered:			
(1) Approximate number of full time equivalent students at Virginia locations per year.			
	FY 2005	FY 2006	FY 2007
(2) Dollars received from college/university textbook sales in Virginia. ($)			
(3) Estimate the average cost of textbooks per full time equivalent student per year. ($)			
(4) Are private vendors selling required textbooks to students?			
If yes, list the name and contact information for the private vendors selling required textbooks.			
(5) What percent of total textbook sales do you estimate is sold by the university/college owned or controlled entities? (That is, what is your bookstore's market share?)			
(6) List the name and telephone number of staff responsible for tallying school bookstore revenues.			
Comments:			

*Please provide as much information as possible. If exact numbers are not available, please provide estimates.

SURVEY INSTRUMENT (SCHOOL LUNCHES)

Please provide the name of your school, mailing address, and a contact name, telephone number, and email address.			
Please answer the questions one and two with data from the most recently completed fiscal year. Specify period covered:			
School Size			
(1) Number of Teachers			
(2) Number of Students			
	FY 2005	FY 2006	FY 2007
(3) Total sales of school meals and snacks sold to K through 12 students and employees exempt of the sales tax. ($)			
Comments:			

*Please provide as much information as possible. If exact numbers are not available, please provide estimates. If you do not have these years, provide the three most recent years you have.

COMMONWEALTH of VIRGINIA

Department of Taxation

MEMORANDUM

TO: The Honorable Charles J. Colgan
The Honorable Harry R. Purkey
The Honorable Lacey E. Putney

FROM: Janie E. Bowen
Tax Commissioner

DATE: December 1, 2008

SUBJECT: 2008 Fiscal Report on Nonprofit Exemptions

Summary

The 2003 General Assembly enacted Chapters 757 and 758, 2003 Acts of Assembly (HB 2525 and SB 743) to simplify the process of qualifying nonprofit organizations for sales and use tax exemptions. As part of this legislation, the Department of Taxation is required to file an annual report by December 1 of each year disclosing the annual fiscal impact of the sales and use tax exemptions for nonprofit entities. On December 1, 2004, TAX filed its first annual fiscal report and subsequent reports have been filed each fiscal year thereafter. TAX reported the sales tax revenue loss as it applied to newly eligible nonprofit organizations applying for an exemption for the first time, as well as organizations renewing their expiring exemption under the new process. The estimated sales tax revenue loss for fiscal year beginning July 1, 2007 and ending June 30, 2008 is $65 million. This report will further provide a cumulative account of the sales and use tax exemption for all nonprofit organizations and will also explain the substantial increase in revenue loss for this period.

Background

Prior to the 2003 General Assembly, there was no general exemption from Virginia's Retail Sales and Use Tax for nonprofit organizations. Virginia's Retail Sales and Use Tax exemptions were generally tailored for specific nonprofit organizations, although any organization meeting the exemption criteria would qualify for the exemption. When the sales and use tax first took effect in 1966 there were 22 exemptions. By 2003 this number had increased to 1,702. In general, sales and use tax exemptions were granted through legislative action by the General Assembly. An organization seeking an exemption could acquire one in two ways. If the organization met the statutory language of an existing exemption by classification, it could apply directly to TAX for an exemption by providing evidence that it met the statutory classification. If the organization did not meet the criteria of an existing classification, the organization had to acquire one by designation through the enactment of a new exemption or the amendment of an existing exemption.

With the exception of certain sales and use tax exemptions that applied to broad classes of businesses, most exemptions were enacted with a sunset date. Virginia law required that nonprofit organizations periodically update information about the organization with TAX in order to renew their exemption. This information was identical to the information required when an organization requested a new exemption. TAX reviewed the information and certified that the organization met the requirements. This information was then given to the Division of Legislative Services for drafting legislation to extend the individual exemptions.

New Exemption Process

House Bill 2525 and Senate Bill 743 were based on recommendations made by the 2003 House Special Study Committee studying sales and use tax exemptions. With the passage of this legislation, the process was simplified and many nonprofit organizations may now apply to TAX to receive an exemption certificate provided they meet certain qualifications. The legislation also grandfathered the exemptions held by nonprofit organizations under the old exemption system for a limited time. This legislation grants to qualifying nonprofit organizations an exemption from paying, and in some cases collecting, retail sales and use tax on purchases of tangible personal property. Additionally, certain grandfathered entities are allowed an exemption from the retail sales and use tax on services that are subject to the tax.

To be granted an exemption by TAX, an entity must meet all the applicable criteria:

- Exemption from federal income taxation under Internal Revenue Code ("IRC") §§ 501 (c) (3) or 501 (c) (4), or have annual gross receipts of less than $5,000 and be organized for a charitable purpose.

- The entity must be in compliance with state solicitation laws, if applicable.

- The entity must have annual administrative costs that are 40% or less of annual gross receipts.

- If the entity's gross annual revenue was $1 million or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public account. If the entity's gross annual revenue was between $750,000 and $1 million, then the entity must provide either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public accountant.

- The entity must provide TAX with a copy of its federal Forms 990 or 990 EZ or a list of its Board of Directors.

- The entity must provide TAX with an estimate of its total taxable purchases.

The process requires renewal on a five to seven-year cycle, but eliminates the need for legislative action. Nonprofit organizations that held a valid exemption certificate under the old system would enjoy their exemption status, but are required to file under the new process when their exemption sunsets. As shown below, all of the original exemption groups have expired and many have applied for an exemption using the new process.

Original Exemption Sunset Dates

Civic and community service (first half) (58.1-609.8) July 1, 2004
Civic and community service (second half) (58.1 -609.8) July 1, 2005
Cultural and Miscellaneous (58.1 -609.9, 58.1 -609.10) July 1, 2006
Educational (58.1 -609.4) July 1, 2007
Medical-Related (58.1 -609.7) July 1, 2008

Technical Amendments to New Exemption Process

There have been several technical amendments made to this process over the last four years. In 2004, Chapters 515 and 536, Acts of Assembly (HB 515 and SB 585), clarified that churches have two options. They may continue using the self-issued exemption certificate, which entitles them to the sales and use tax exemption available under the law as it existed on June 30, 2003, or they could apply for a general exemption certificate under the new process. An additional provision was added to ensure that nonprofit organizations that provide rescue or firefighting services but do not have IRC §§ 501 (c)(3) or 501 (c)(4) status could obtain an exemption via the new process from July 1, 2004 through June 30, 2006. This bill also grandfathered the exemption from collecting the on fundraiser sales that was enjoyed by certain organizations, and clarified that TAX is authorized to refuse to grant exemption certificates to applicants that fail to disclose their total taxable purchases for the preceding year.

In 2005, the General Assembly passed a technical amendment clarifying the law was it applies to taxable services for certain organizations. Under Chapters 42 and 89, 2005 Acts of Assembly (HB 2100 and SB 1105), organizations holding a valid exemption as of June 30, 2003, would continue to purchase taxable services exempt of the tax, provided they complied with certain procedures and met certain requirements.

This legislation affected the exemption status of only twelve organizations, some of which actually renewed under the new process, and two of which did not qualify under the new process, as they have a federal designation of IRC § 501 (c)(19) and no longer qualified for an exemption.

The 2006 General Assembly expanded the sales and use tax exemption for nonprofit churches exempt from taxation under IRC § 501 (c) (3), or whose real property is exempt from local taxation pursuant to the provisions of Section 58.1 -3606 of the Code of Virginia. Under Chapter 338, Acts of Assembly (HB 576) expanded the exemption to include tangible personal property used for recording and reproducing services. The exemption includes a nonprofit church's purchase of video recording equipment, microphones, cassette players, and similar items that are used for recording and reproducing services.

The exemption for nonprofit churches was originally enacted in 1979 and was limited to tangible personal property used by a nonprofit church in its religious worship services or in a regular school of religious education. Since its enactment, the exemption has been expanded several times.

As a result of this change, a nonprofit church has two processes by which they can obtain an exemption for tangible personal property used for recording and reproducing services:

- They may use their self-issued exemption certificate (Form ST-13A) which, while limited, has been expanded by this bill; or

- They may apply to TAX for a broader exemption, which was enacted during the 2003 Virginia General Assembly session.

During the Special Session of the 2006 General Assembly, House Bill 5002 (Chapter 3, Special Session 1 of 2006) and House Bill 5012 (Chapter 2, Special Session 1 of 2006) modified the criteria that nonprofit entities must meet in order to qualify for a sales and use tax exemption. Previously, one of the criteria required organizations with gross annual revenues of $250,000 or greater during the previous year to provide a financial audit performed by an independent certified public accountant to TAX. These bills change this requirement to allow an entity with between $250,000 and $500,000 of gross annual revenue in the previous year to provide a review of its financial statements in lieu of a full audit. The review must be performed by an independent certified public accountant. Entities with more than $500,000 of gross annual revenue are still required to provide a full audit performed by an independent certified public accountant. Entities with less than $250,000 of gross annual revenue would continue to have no requirement to provide any type of financial audit or review.

The 2007 General Assembly passed legislation that modified the audit requirement for nonprofit organizations applying for a retail sales and use tax exemption. House Bill 2545 (Chapter 698), House Bill 3062 (Chapter 704) and Senate Bill 743 (Chapter 709) now allow nonprofit organizations that have gross annual revenues between $750,000 to $1,000,000, the choice of providing a full "financial audit" or a "financial review" in lieu of a full financial audit, both of which must be performed by an independent certified public accountant. Nonprofit organizations with gross annual revenues of $1 million or greater must provide a full financial audit performed by an independent certified public accountant. Entities with less than $750,000 of gross annual revenue would have no requirement to provide any type of financial audit or review.

Finally, legislation passed in 2007 also expanded the sales and use tax exemption for nonprofit churches exempt from taxation under IRC § 501 (c)(3) or whose real property is exempt from local taxation pursuant to the provisions of Section 58.1-3606 of the Code of Virginia. House Bill 2724 (Chapter 758) expanded the exemption to include tangible personal property used in the care or maintenance of any property owned by these churches. The exemption would include, but not be limited to, such items as mowing equipment and building materials that are installed by the church rather than through a contract.

Online Exemption Process

Since June 2003, over 12,000 nonprofit organizations have accessed Nonprofit Online. Nonprofit Online, (https://www.npo.tax.virginia.gov) an online application was developed to provide a quick, efficient and secure way for an organization to apply for a Virginia sales and use tax exemption for the first time or renew their exemption certificate. Customers accessing Nonprofit Online may print out a copy of their Virginia sales and use certificate, edit certain registration information as it changes, as well as reprint lost certificates without having to contact TAX. TAX continues to receive high marks for its online application from organizations that have submitted applications online.

Current Year Fiscal Impact

The current year fiscal impact is based on the total estimated taxable purchases made in this fiscal year (beginning July 1, 2007 and ending June 30, 2008) by 1,210 organizations acquiring an exemption under the new process. The totals consist of a combination of the revenue loss for new organizations and organizations that have renewed their exemption under the new process. Using the 2007 estimated taxable purchases provided by organizations, the estimated fiscal year 2007 state and local sales tax revenue loss from organizations taking advantage of the new exemption process in fiscal year 2007 totals $65 million. The $65 million represents $5.7 million that is attributable to 923 nonprofit organizations applying to TAX for the first time and $59.3 is attributable to 287 organizations renewing their existing exemption. The numbers provided for this report were drawn from an unaudited survey of nonprofit organizations.

The estimated 2008 fiscal year sales tax revenue loss is substantially higher than last year's sales tax revenue loss of $6 million. This year's fiscal impact includes groups such as nonprofit hospitals, retirement /nursing facilities and nonprofit clinics. Although the numbers of organizations renewing their exemption appear small, these groups typically purchase higher dollar equipment than the average nonprofit organization. The purchases made by these organizations averaged $4.2 million.

Conclusion

The chart below illustrates the estimated sales tax revenue loss based on information provided by organizations using the new exemption process for fiscal years 2004 through 2008. The cumulative first year revenue loss for all nonprofit exemptions granted between July 1, 2004 and June 30, 2008 is $198.7 million. The revenue impact is based solely on data supplied by the organizations with respect to estimated purchases made. TAX has no data to support or to refute the assumption that the projected revenue loss in the year the organization obtains the exemption will increase, decrease or stay constant in subsequent years. To the extent any organization may have overstated or understated its estimated purchases, the fiscal impact would fluctuate accordingly.

Estimated Sales Tax Revenue Loss

2004 Fiscal Year Sales Tax Revenue Loss	$56.2 million
2005 Fiscal Year Sales Tax Revenue Loss	$62.5 million
2006 Fiscal Year Sales Tax Revenue Loss	$6 million
2007 Fiscal Year Sales Tax Revenue Loss	$9 million
2008 Fiscal Year Sales Tax Revenue Loss	$65 million

Total Sales Tax Revenue Loss - $198.7 million

c: The Honorable Richard D. Brown, Secretary of Finance