EXECUTIVE SUMMARY:

EXEMPTION FOR NONPROFIT ORGANIZATIONS

(SALES TAX)

OCTOBER, 2014

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

- PREFERENCE:

§ 58.1-609.11

- SUMMARY:

Nonprofit entities that meet certain criteria receive an exemption from paying sales and use taxes from the Department of Taxation.

- REVENUE IMPACT:

The exemption for nonprofit organizations accounts for approximately $208.4 million in reduced sales and use tax revenue.

- JOINT SUBCOMMITTEE RECOMMENDATION:

The Joint Subcommittee recommended continuing the sales and use tax exemption for nonprofit entities.

PREFERENCE REPORT:

EXEMPTION FOR NONPROFIT ENTITIES

(SALES TAX)

OCTOBER, 2014

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

Preference Description

Section 58.1-609.11 of the Code of Virginia[1] permits nonprofit entities to apply to the Department of Taxation, and receive an exemption from paying sales and use tax[2] if the entity:

1. Is exempt from federal income taxation (i) under § 501(c)(3) of the Internal Revenue Code or under § 501(c)(4) of the Internal Revenue Code and is organized for a charitable purpose; or (ii) has annual gross receipts less than $5,000, and is organized for at least one of the purposes set forth in § 501(c)(3) or one of the charitable purposes set forth in § 501(c)(4); and

2. Is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and

3. Has annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue not greater than 40 percent; and

4. Provides a financial review performed by an independent certified public accountant if the entity's gross annual revenue was at least $750,000 in the previous year. For any entity with gross annual revenue of at least $1 million in the previous year, the Department may require a financial audit performed by an independent certified public accountant; and

5. Provides a copy of any federal 990 or 990 EZ tax form filed with the Internal Revenue Service, and if no such form was filed, provide a list of the Board of Directors and the location of the financial records; and

6. Provides the total taxable purchases made in the preceding year.

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[1] See Appendix A for complete text of § 58.1-609.11.

[2] As used hereafter in this document "sales tax" means the same as "sales and use tax."

Any entity that is exempt from paying sales tax is also exempt from collecting sales tax on its fundraising sales if the entity is within the same class of organizations that was exempt from collecting sales and use tax on June 30, 2003.[3]

The duration of each exemption granted is no less than five years and no greater than seven years, after which the entity must reapply. However, during the period of the exemption, the failure of an exempt entity to maintain compliance with applicable criteria shall constitute grounds for revocation of the exemption by the Department.

Preference Purpose

There is no official statement of the purpose for exempting nonprofit organizations from paying sales tax. The types of nonprofit organizations that may receive an exemption under § 501(c)(3) of the Internal Revenue Code, and therefore are eligible to apply for the Virginia sales tax exemption, are those that are organized for charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, or preventing cruelty to children or animals purposes.[4] Therefore it may be surmised that the exemption is intended to foster these types of activities.

One purpose that has been espoused is that nonprofit organizations provide services that government might otherwise have to provide. However, there is no uniformity among the exempt organizations as to the extent, if any, that they provide services that otherwise would have to be provided by the Commonwealth. Other reasons for the exemption that have been expressed are that nonprofits encourage civic involvement, provide information on public policy issues, and provide goods and services that would not be provided by the for-profit sector.

Legislative History & Background

Two types of nonprofit organizations were exempt from the inception of the sales and use tax in 1966. Subsection t of Former § 58-441.1 exempted: "tangible personal property for use or consumption by a college or other institution of learning or a hospital, provided such college, institution of learning or hospital is not conducted for profit." By 2003 there were 1,702 exemptions for nonprofit entities enacted by the General Assembly. Most of these exemptions

[3] The process for exempting nonprofits was fundamentally changed on July 1, 2013, as discussed below.
[4] Section 58.1-609.11 also permits charitable 501(c)(4) nonprofits to apply for the exemption.

stemmed from individual bills introduced for a specific nonprofit entity describing the entity by its functions without stating the name of the organization.[5] As a result many of the exemptions also encompassed other similar organizations which then could take advantage of the exemption by contacting the Department of Taxation. With the exception of certain exemptions that applied to broad classes of organizations (e.g. nonprofit hospitals), most exemptions were enacted with a sunset date. These sunset dates were routinely extended with little examination of facts or policy related to the exemption.

This method of creating exemptions was thought by many to be (i) cumbersome and burdensome on the nonprofit organizations as well as on the General Assembly and (ii) lacking any consistent, firm criteria for determining which entities should be granted an exemption. As a result, in 2003 the General Assembly, based on recommendations made by the 2003 House Special Study Committee studying Retail Sales and Use Tax Exemptions (chaired by Delegate Robert D. Orrock), passed a bill that fundamentally changed the exemption process for nonprofit organizations. The new law directed the Department of Taxation to grant exemptions to nonprofit organizations that apply to the Department and meet certain criteria set forth in the law. Such exemptions were subject to renewal on a five to seven-year cycle.

The legislation grandfathered the exemptions held by nonprofit organizations under the old exemption system for a limited time (which has now expired), after which they would have to follow the same application procedure to retain their exemption.

Under the original 2003 law, to be granted an exemption by the Department of Taxation, an entity had to meet all the following requirements:

- Be exempt from federal income taxation under Internal Revenue Code § 501(c)(3), § 501(c)(4) if the entity was organized for a charitable purpose, or have annual gross receipts of less than $5,000 and be organized for a purpose set forth in § 501 (c) (3) or a charitable purpose under § 501(c)(4);.
- Be in compliance with state solicitation laws;
- Have annual administrative costs that do not exceed 40% of annual gross receipts;
- For entities with gross annual revenue of at least $250,000 in the previous year, provide a financial audit performed by an independent certified public accountant;
- Provide a copy of its federal Forms 990, 990 EZ, 990-N or a list of its Board of Directors;
- Provide an estimate of its total taxable purchases.

[5] Presumably this method of description was intended to alleviate any concerns that the bill would constitute special legislation prohibited by Article IV, § 14 of the Constitution of Virginia.

The 2003 procedures have been amended several times.

2004:[6] Clarified that the exemption for nonprofits on their sales under the pre-2003 law continued, extended such exemption to similar organizations and to certain youth athletic organizations, and required nonprofits to provide the prior year's taxable purchases.

2005:[7] Clarified that the few grandfathered organizations that were exempt from sales on taxable services (e.g. hotel rooms) retained such exemption, provided they met all the criteria applicable to all nonprofit organizations.

2007: The amount of the gross annual revenue triggering the audit requirement[8] was increased from $250,000 to $1 million. Entities with gross annual revenues of $750,000 to $1,000,000, were required to provide a "financial review."

2009:[9] The audit requirement (as opposed to a financial review) for entities with over $1 million in gross annual revenues in the previous year was removed. The Department of Taxation was given the discretion to require any such entity to provide a financial audit in lieu of a financial review.

Other States

There is wide variation state-to-state in the extent to which they exempt nonprofit entities from sales tax. In addition there are differences intrastate on exemptions from (i) paying sales tax on purchases, versus (ii) collecting sales tax on sales. Therefore the exemption for purchases and sales will be discussed separately.

Purchases by Nonprofits

Regarding exemptions for nonprofits on their purchases, Table 1 lists the scope of states' exemptions according to three categories -- broad, limited, and de minimis. Twenty-seven of the states that have a sales tax, including Virginia, provide a broad sales tax exemption for purchases made by nonprofits. The exemption in the seventeen states with a limited exemption is narrower and covers certain types of nonprofits or specific organizations. Finally, two states, South Carolina and Washington, provide little or no exemption (de minimis).

[6] Chapters 515 and 536 of the Acts of Assembly of 2004.
[7] Chapters 42 and 89 of the Acts of Assembly of 2005.
[8] Chapters 698 and 709 of the Acts of Assembly of 2007.
[9] Chapters 106 and 526 of the Acts of Assembly of 2009.

The nonprofit organizations exempt in states with a broad exemption are roughly similar to those that are exempt in Virginia. Currently there are approximately 7,826 nonprofit entities, excluding most churches, exempt in Virginia. It is estimated that another 10,000 churches are exempt.[10] There are many other nonprofit entities that would meet the criteria but have not applied to the Department of Taxation.

Regarding states with a limited exemption, Table 2 briefly describes each state's exemption. The states in this category include, for example, (i) South Dakota, which exempts only hospitals, schools, and "relief agencies," which are defined as 501(c)(3) organizations that devote their resources exclusively to the relief of the poor, distressed, or underprivileged; (ii) Arkansas, where the only exemptions are for nonprofit hospitals, and about twenty specific nonprofit organizations (churches are not exempt); and (iii) Alabama which has about 150 exemptions for specific nonprofit organizations.

An example of an exemption in a state with a de minimis exemption is the $300 cap in South Carolina on sales tax paid by churches on the purchase of each piece of office equipment or musical instruments.

Regarding some neighboring states, (i) North Carolina provides a refund of sales tax to nonprofit organizations and caps the total annual amount for each organization at $31,700,000; (ii) Maryland and the District of Columbia restrict their exemptions to organizations located within their jurisdiction (or, in Maryland, in an adjacent state under certain conditions); and (iii) West Virginia exempts churches, nonprofit elementary and secondary schools, other specific organizations, and §501(c)(3) or § 501(c)(4) organizations that receive more than half of their revenues from gifts, grants, direct or indirect charitable contributions, or membership fees.

Table 1: Summary of State Sales Tax Exemption for Purchases by Nonprofit Organizations[11]

Broad Exemption		***Limited Exemption***	***De Minimis***
Colorado	New Mexico	Alabama	South Carolina
Connecticut	New York	Arizona	Washington

[10] A separate statutory exemption for churches was enacted in 1979, (subsection 16 of § 58.1-609.10) which churches still may use as an alternative to the process for all other nonprofits. The separate exemption for churches is only slightly narrower in scope. The Department of Taxation permits churches to "self-execute" their exemption certificates under this separate exemption, and most of Virginia's approximately 11,000 churches claim their exemption in this manner. Accordingly, there are few statistics for these churches.

[11]Sources: Mikesell, John L. "State Retail Sales Tax Treatment of Nonprofits." *State Tax Notes*, June 1, 2009, and © 2014 Thomson Reuters/Tax & Accounting.[11]

Broad Exemption		***Limited Exemption***	***De Minimis***
District of Columbia Florida Hawaii Illinois Indiana Kentucky Maryland Massachusetts Michigan Minnesota Missouri Nevada New Jersey	Ohio Pennsylvania Rhode Island Tennessee Texas Utah Vermont Virginia Wisconsin Wyoming	Arkansas California Georgia Idaho Iowa Kansas Louisiana Maine Mississippi Nebraska North Carolina* North Dakota Oklahoma South Dakota West Virginia	

*North Carolina semiannually refunds sales tax paid on direct purchases by certain types of nonprofit organizations

Table 2: State Sales Tax Exemption for Purchases by Nonprofit Organizations[12]

State	***Exempt Entities***
Alabama	No general exemption, some specific and usually by name (e.g., Boy Scouts of America).
Arizona	No general exemption, but exemption for qualified hospital and healthcare organizations, organizations serving free meals to the needy and organizations providing training to mentally or physically handicapped.
Arkansas	Exemption limited to nonprofit hospitals, and about twenty specific nonprofit organizations
California	No general exemption, but entity may not be taxed on items purchased for resale, art and museum pieces for public display, and health information materials for distribution.
Colorado	Sales to charitable organizations in conduct of regular charitable activities are exempt. Organizations exempt under IRC 501(c)(3) will be exempt unless the Department of Revenue makes its own determination about the organization's charitable status.
Connecticut	Exemption references IRC 501(c)(3).
District of Columbia	Organization must be located in DC and purchase must be used for operations of the organization.
Florida	Exemption references IRC 501 (c)(3) plus other nonprofits.
Georgia	No general exemption
Hawaii	Very broad exemptions
Idaho	No general exemption, but state exempts purchases by hospitals, specifically named health-related entities (e.g., American Cancer Society and American Red Cross), museums, senior citizen centers, and some others.
Illinois	Exempts charitable, religious, educational, and cultural or arts organizations (need IRC 501 (c)(3) designation).

[12] Sources: Mikesell, John L. "State Retail Sales Tax Treatment of Nonprofits." *State Tax Notes*, June 1, 2009, and © 2014 Thomson Reuters/Tax & Accounting.[12]

State	Exempt Entities
Indiana	Exempts charitable, civic, educational, literary, religious, scientific, hospitals, and others. Not as broad as IRC 501 (c)(3).
Iowa	No general exemption, but some types of entities are exempt (e.g., American Red Cross, hospitals, museums, and residential facilities for mentally handicapped children)
Kansas	No general exemption, but many named organizations (e.g., American Lung Association) and some types are exempt (e.g., hospitals, museums).
Kentucky	Exempts all charitable, educational, or religious institutions or historical sites (Must have IRS 501(c)(3) designation).
Louisiana	No general exemption. Limited specific exemptions (for example, organization providing training for the blind, limited charity, toys for donation to minors).
Maine	No general exemption, but specific exemption for certain healthcare, educational, religious, child-related, and other organizations (purchases by purchase order only).
Maryland	Exempts charitable, educational, religious, volunteer fire, and veterans organizations (usually requires IRC 501 (c)(3) determination; designation creates presumption of exemption).
Massachusetts	Exempts religious, charitable, education, or scientific (any IRC 501(c)(3)).
Michigan	Exempts hospital, church, IRC 510(c)(3), and IRC 501(c)(4). (Automatic)
Minnesota	Exempts charitable (including hospitals), religious, educational (including youth groups), and senior citizen and veterans groups. (Linked to property tax exemption).
Mississippi	No general exemption, but hospitals and some specific categories exempt.
Missouri	Exempts charitable, religious, civic, social, service, and fraternal (charitable functions).
Nebraska	No general exemption; exempts certain entities, including religious organizations, those serving the blind, hospitals and related child care, child-placing agencies, and organizations serving persons with developmental disabilities.

State	***Exempt Entities***
Nevada	Exempts religious, charitable, and educational entities (including hospitals) (not linked to IRC 501(c)(3)).
New Jersey	Exempts religious, charitable, educational, scientific, literary, veterans, volunteer fire department, and PTA/PTO organizations (IRS 501(c)(3) not referenced).
New Mexico	Exempts IRC 501(c)(3) organizations on tangible personal property only (not services or construction materials).
New York	Exempts religious, charitable, educational, scientific, literary, and other select nonprofit organizations. (IRC 501(c)(3) not referenced but uses same list).
North Carolina	Purchases not exempt, but sales tax paid on direct purchases by nonprofit hospitals, educational institutions, churches, orphanages, and other charitable or religious institutions and qualified retirement facilities are subject to semiannual refund.
North Dakota	No general exemption; exempts hospitals and nonprofit health and meal delivery groups.
Ohio	Exempts sales to churches and certain other nonprofit organizations (IRC 501(c)(3) status).
Oklahoma	No general exemption; exempts churches, nonprofit schools, cultural organizations, and some others.
Pennsylvania	Exempts charitable, religious, and educational organizations and volunteers (purchase of $200 or more).
Rhode Island	Exempts nonprofit hospitals, educational institutions, churches, and others by listed type.
South Carolina	De minimis (e.g. free hospitals for children, and cap on tax ($300) on musical instruments purchased by churches
South Dakota	Exempts nonprofit hospitals, nonprofit schools, and charitable relief agencies (i.e. nonprofits that devote their resources exclusively to the relief of the poor, distressed, or underprivileged.
Tennessee	Exempts churches, orphanages, hospitals, and others, including some by name (e.g., Boys Club); No general exemption for items to be resold (references IRC 501(c)(3) and more).
Texas	Exempts charitable, educational, and religious

State	Exempt Entities
	organizations; some others by type (references IRC 501(c)(3)).
Utah	Exempts sales to religious or charitable institutions (must have IRC 501(c)(3) exemption); sales less than $1,000 by refund.
Vermont	Exempts organizations that qualify under IRC 501(c)(3).
Virginia	Exempts IRC 501(c)(3) and IRC 501(c)(4) organizations. Separate legislative actions no longer required.
Washington	De minimis (e.g sales to.free hospitals which do not charge any patients), and sales to health and social welfare organizations for items necessary for the new construction of licensed alternative housing for youth in crisis.)
West Virginia	Exempts purchases by IRC 501(c)(3) organizations, subject to requirement that entity be a church, elementary or secondary school financed by contributors, or a youth organization (public support test).
Wisconsin	Exempts purchases by religious, charitable, scientific, or educational organizations and those devoted to prevention of cruelty to children or animals.
Wyoming	Exempts purchases by religious or charitable organizations and nonprofit organizations providing meals or service to senior citizens.

Sales by Nonprofits

Table 3 summarizes how states treat nonprofits' collection of sales tax on their sales, using the same categories as in Table 1 (broad, limited, de minimis). Eight states provide a broad exemption for nonprofit sales, while eight other states provide no general exemption. Thirty states, including Virginia, provide a more limited exemption from collecting sales tax on their sales. As previously stated, in Virginia, a few classes of organization were exempt from collecting sales tax on their sales prior to the new exemption procedure on July 1, 2003, and they were permitted to retain this exemption. In addition, any entity that is determined to be within the same class of such organizations is entitled to this exemption.

Table 3: Summary of State Sales Tax Exemption of Sales by Nonprofit Organizations[13]

Broad Exemption	***Limited Exemption***		***De Minimis***
Arizona	Colorado	New Jersey	Alabama
Arkansas	Connecticut	New York	California*
Iowa	District of Columbia	North Carolina	Hawaii
Missouri	Florida	North Dakota	Idaho
Nevada	Georgia	Ohio	Kansas
New Mexico	Illinois	Oklahoma	Nebraska*
South Carolina	Indiana	Rhode Island	Pennsylvania*
Utah	Kentucky	Tennessee	South Dakota*
	Louisiana	Texas	
	Maine	Vermont	
	Maryland	Virginia	
	Massachusetts	Washington	
	Michigan	West Virginia	
	Minnesota	Wisconsin	
	Mississippi	Wyoming	

* State exempts isolated sales by specific organizations.

[13] Sources: Mikesell, John L. "State Retail Sales Tax Treatment of Nonprofits." *State Tax Notes*, June 1, 2009, and © 2014 Thomson Reuters/Tax & Accounting.[13]

Table 4 briefly describes the exemption for sales by nonprofit organizations among the states. The ways in which states in the "limited" category confine their exemptions is by: (1) restricting the number of days per year for tax-exempt sales, (2) capping the proceeds from the sales, (3) restricting the types of items eligible, or (4) capping the price per item in the exempt sales.

Exemptions for sales by noprofits are often intertwined with an exemption available in most states referred to as "occasional sales." Generally this exemption is available to all sellers (e.g. family garage sales) not just nonprofit organizations. Virginia's occasional sales exemption is set out in subdivision 2 of § 58.1-609.10[14] and refers to a definition in § 58.1-602.[15] To qualify for this exemption, the selling activities cannot take place more than three times per year. An amendment in 2009 broadened the exemption for nonprofits to permit them to maintain the exemption on their sale of food, and tickets to events that provide food, as long as such activities occur less than 24 times per year.

Table 4: State Sales Tax Exemption of Sales by Nonprofit Organizations[16]

State	*Status*
Alabama	Not exempt.
Arizona	Broadly exempt.
Arkansas	Exempts sales by churches and charitable organizations.
California	Generally taxed, limited exemption for particular sales (for example, pets by animal welfare organizations). Special provisions when fundraising firm used.

[14] 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:

2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of (i) food, prepared food and meals and (ii) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on fewer than 24 occasions in a calendar year.

[15] § 58.1-602 defines "occasional sale" as a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

[16] Sources: Mikesell, John L. "State Retail Sales Tax Treatment of Nonprofits." *State Tax Notes*, June 1, 2009, and © 2014 Thomson Reuters/Tax & Accounting.[16]

State	***Status***
Colorado	Exemption for fundraising activities (12 days or less, net proceeds not exceeding $25,000).
Connecticut	Exemption for up to five one-day fundraising events per year. (purchases for resale are exempt).
District of Columbia	Sale of items purchased for resale not exempt.
Florida	Exempts sales of donated property by organizations benefiting minors and sales by religious institutions.
Georgia	Exempts religious institution fundraiser sales (no more than 30 days), sales by organizations raising funds for public libraries, and food and beverage sales by Girl and Boy Scouts.
Hawaii	Not exempt.
Idaho	Not exempt (exempt purchases for resale are reimbursed from the amount collected when sold). Exempts fees charged at shooting ranges or shooting competitions.
Illinois	Not exempt, except for sales exclusively to members, students, patients, and inmates, occasional public dinners no more than twice per year, and sales not in direct competition with business.
Indiana	Exempts fundraising sales for not more than 20 days per year. Sale of periodicals, books, or other property for educational, cultural, or religious purposes or for improvement of member job skills or professional qualifications is exempt.
Iowa	Exempts sales by educational, religious, or charitable organizations if profits are used for exempt purpose.
Kansas	Not exempt.
Kentucky	Exempts first $1,000 of sales by nonprofit organizations not in the business of selling.
Louisiana	Exempt at events when proceeds used for organization's purposes (by application for the event).
Maine	Fundraiser sales exempt as casual sales (taxable when items purchased by organization). Other sales are not exempt.
Maryland	Exempts sales by religious organizations, certain food sales, and hospital thrift shop sales.
Massachusetts	Exempts casual and isolated sales for fundraising (not in regular course of business). Museum gift shop sales are taxable.
Michigan	Exempts sales if less than $5,000 in calendar year. All sales taxed if sales exceed $5,000. (items purchased for resale are exempt)
Minnesota	Fundraising sales exempt (not more than 24 days per year).
Mississippi	Exempts Girl Scout cookies and sales by nonprofit and schools.

State	*Status*
	Isolated, casual, and occasional sales also exempt.
Missouri	Exempt.
Nebraska	Not exempt, except for the sale of meals by and one annual sale at religious organizations
Nevada	Exempt.
New Jersey	Exempts occasional fundraising sales and qualifying thrift store sales.
New Mexico	Exempt.
New York	Exempt (certain exceptions).
North Carolina	Not exempt, except for one fundraiser per year and food sales by religious institutions. Resale exemption for purchase of taxable items.
North Dakota	No exemption for ongoing sales in competition with private businesses or for limited events in publicly owned facilities; exempts other sales. Exempts annual church supper or bazaar in public facility.
Ohio	Exempts sales for up to six days in calendar year.
Oklahoma	Not general exemption, but exempts sales by churches and a list of other organizations.
Pennsylvania	No exemption, except isolated sales and food and beverages sold by church.
Rhode Island	Exempts organizations supporting youth activities or items sold for up to $20.
South Carolina	Exemption for sale by churches, charitable, educational, and literacy organizations, and some named entities (e.g., Girl Scouts).
South Dakota	No general exemption; certain admissions exempt.
Tennessee	Exemption up to two sales per calendar year for periods of 30 days or less. Organizations over that limit but selling no more than $400 per month may pay tax on items purchased for sale in lieu of collecting tax on sales. Larger organizations must collect tax and may purchase without paying tax. Sales of used clothing are exempt.
Texas	No general exemption. Limited exemption for certain meat and food sales, banquets, auctions, and rummage sales (two, one day per year, items not sold for more than $5,000), senior citizen groups (self-made items, no more than four 20-day sales per year), and periodicals published by certain organizations.
Utah	Exempts sales by religious or charitable institutions.

State	Status
Vermont	Exempts sales by organization if its sales did not exceed $5,000 in the prior year.
Virginia	Exempts occasional sales (up to three occasions in calendar year, each started and finished within 30 days), and exempts a few specific nonprofits even if the organization operates outside of the restrictions for "occasional sales."
Washington	Exempts fundraising activities (not regular business activities).
West Virginia	Exempts fundraising events for churches and nonprofit organizations (up to six events lasting no more than 84 hours in 12-month period).
Wisconsin	Exempts occasional sales by nonprofit organizations (20 days or less, total receipts of $25,000 or less).
Wyoming	Exempts occasional sales by religious or charitable organizations for fundraising and not in course of regular business (single event occurring four or fewer times in a year).

Revenue Impact

The exemption for nonprofit organizations accounts for approximately $208.4 million in reduced sales and use tax revenue (FY 2014). According to the Department of Taxation's list of these organizations, of the top 100 having the highest dollar amount of exempt purchases (and therefore the highest amount of tax savings):

- Fifty are categorized as medical (e.g. Sentara Hospitals with $405,100,000 in purchases, Innova Health Care Services with $370,050,510 in purchases, and Carilion Medical Center with $151,881,865 in purchases);
- Twenty-six as educational (e.g. University of Richmond with $85,211,555 in purchases, the Grafton School with $34,266,443 in purchases, and Georgetown University with $23,495,751 in purchases);
- Twenty-two as civic and community services (e.g. the MITRE Corp. with $23,654,600 in purchases, the International Mission Board of Southern Baptist Convention with $15,166,487 in purchases, and the Young Men's Christian Association of Hampton Roads with $13,500,000 in purchases);
- One as "church," Catholic Relief Services United States Conference of Catholic Bishops with $7,092,207 in purchases; and
- One as "cultural," the American Type Culture Collection with purchases $15,920,000.

Other Information

Sixty-four people provided comments either in person at the public hearing held by staff on August 26, 2014 or via e-mail pursuant to the Joint Subcommittee's request for public comment. A summary of these comments is in the Appendix.

Joint Subcommittee Recommendation

The Joint Subcommittee recommended continuing the sales and use tax exemption for nonprofit entities.

§ 58.1-609.11. Exemptions for nonprofit entities.

A. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as such sections are in effect on June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow the procedures set forth in subsection B and meet the criteria set forth in subsection C. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C.

B. On and after July 1, 2004, in addition to the organizations described in subsection A, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

C. To qualify for the exemption under subsection B, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501(c)(3) of the Internal Revenue Code or (ii) under § 501(c)(4) of the Internal Revenue Code and, if it is exempt under § 501(c)(4) of the Internal Revenue Code, it is organized for a charitable purpose; or

b. The entity has annual gross receipts less than $5,000, and the entity is organized for at least one of the purposes set forth in § 501(c)(3) of the Internal Revenue Code, or one of the charitable purposes set forth in § 501(c)(4) of the Internal Revenue Code; and

2. The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and

3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

4. If the entity's gross annual revenue was at least $750,000 in the previous year, then the entity must provide a financial review performed by an independent certified public accountant. However, for any entity with gross annual revenue of at least $1 million in the previous year, the Department may require that the entity provide a financial audit performed by an independent certified public accountant. If the Department specifically requires an entity with gross annual revenue of at least $1 million in the previous year to provide a financial audit performed by an independent certified public accountant, then the entity shall provide such audit in order to qualify for the exemption under this section, which audit shall be in lieu of the financial review; and

5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and

6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:

a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and

b. The location where the financial records of the entity are available for public inspection.

D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

F. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

G. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

§ 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:

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.

Sales Tax Exemption for Nonprofit Organizations

Summary of Public Comments

Sixty-four total comments via written and in-person communications were received regarding the sales and use tax exemption for nonprofit organizations. All were in favor of the exemption, and some suggested ways to improve the process to make it easier for nonprofits to obtain the exemption.

About twenty comments came from various long-term care providers and stressed that the exemption was very important in providing benevolent care, creating endowments, and providing community support activities. Another comment indicated that it is unnecessary to revisit the exemption now because of the thorough examination and overhaul of the process in 2002, and the stringent criteria that was adopted then (as well as continuing and new requirements at the federal level). Other comments stated that the sales tax exemption was justified because nonprofit organizations: (i) provide services that otherwise would have to be provided by state or local government, (ii) provide more than 233,000 jobs statewide, (iii) are uniquely situated to leverage private contributions and volunteer services, (iv) provide safety-net programs that would not otherwise be provided, (v) assist individuals in becoming self-sufficient, tax-paying citizens, (vi) already have been burdened through decreased assistance from the state and increased demand for their services due to recent cuts in state assistance to various social programs, (ix) provide services far in excess of any revenue loss to the state, and (x) would otherwise have to cut back on services.

Some of the services provided by the various organizations responding were: (i) benevolent care for veterans including housing and physical rehabilitation for active duty wounded veterans, (ii) research about cardiovascular disease and stroke, (iii) food and shelter for the needy, (iv) volunteer rescue services, (v) adult day care, (vi) services by nonprofit hospitals, (vii), services by nonprofit educational institutions, (vii) religious services, (viii) senior long-term living and care, (ix) development programs for girls at or near poverty, and (x) job training for the unemployed and the underemployed.

Some commentators suggested doing away with the criterion capping administrative expenses at 40% of total revenue, arguing that the emphasis should be on the outcomes of the organizations, rather than their administrative structure. Others stated that the application process was too time-consuming and complicated, particularly the audit requirements.