

# ADMINISTRATION OF THE VIRGINIA USE TAX

Virginia Department of Taxation  
June 11, 2002

## ADMINISTRATION OF THE VIRGINIA USE TAX

The retail sales and use tax in Virginia has two distinct components. The sales tax applies to tangible property actually sold within Virginia. The complementary use tax applies to property purchased elsewhere, but used within Virginia. The use tax is designed to ensure that out-of-state sellers do not have a tax advantage over Virginia retailers.

Two U.S. Supreme Court decisions have held that states may not compel out-of-state sellers without physical nexus to the state to register and collect the use tax on sales to residents. As a result, the only mechanisms left to Virginia and other states to collect the tax on sales from out-of-state sellers to Virginia customers (e.g. mail order and Internet sales) are assessing Virginia purchasers for the use tax on their untaxed purchases or encouraging out-of-state retailers to voluntarily register and collect Virginia tax.

### Actions Taken to Collect Use Tax in Virginia

Since there are currently no legal grounds to compel dealers to register, Virginia has focused on identifying and assessing the Virginia purchasers of untaxed property. Given the fiscal magnitude of the problem, this approach is much like the needle in a haystack; however, the long-range objective of the program is to "encourage" out-of-state dealers to register by targeting their customer base in Virginia. The philosophical underpinning of this approach is that as the state increases pressure on consumers to pay the use tax on untaxed out-of-state sales, these customers will in turn exert pressure on out-of-state companies to collect the tax and eliminate the "tax nuisance."

Virginia law provides a specific exemption from the payment of use tax by individuals on mail order or catalog purchases totaling \$100 or less during the calendar year.

### Specific Actions Taken

**Furniture Purchases:** One of the most visible manifestations of the use tax compliance program is out-of-state furniture purchases, most notably from North Carolina dealers. This situation is particularly egregious for Virginia and other southeastern states due to the physical proximity of North Carolina. Virginia residents contact North Carolina furniture dealers who arrange shipment of their untaxed purchases directly into Virginia. Although the Virginia purchaser will owe use tax on the untaxed property imported into the state, only a handful of North Carolina dealers have agreed to register and collect the tax for their customers.

**Foreign Purchases:** Virginia has also worked closely with the U.S. Customs service to obtain information about large dollar personal imports into Virginia. Assessments totaling more than \$180,000 have been issued to a variety of individuals

## ADMINISTRATION OF THE USE TAX

May 23, 2002

Page 2

for items such as expensive artwork and jewelry, all of which were imported into the state tax-free.

**Use Tax Return In Individual Income Tax Packet:** The most visible use tax compliance effort has been the use of the individual income tax return and packet to educate taxpayers about the use tax. Since 1990, Virginians have been allowed to pay their use tax on their individual income tax returns. Individuals due a refund may pay their use tax liability by deducting the amount due from their refund. This program has been very successful in creating an awareness of the use tax and has generated a significant amount of regional and national publicity.

**Voluntary Registration:** A number of out-of-state sellers have voluntarily come forward and registered to collect Virginia tax. However, the number of firms that have taken this step is small. Over the years, in order to increase the number of registrations, Virginia has sent letters to unregistered out-of-state and invited them to voluntarily collect the Virginia tax. As a result of this effort, a significant number of companies are now registered with Virginia and reporting use tax.

### Other Options for Collecting Use Tax

The Streamlined Sales Tax Project is a collaborative effort of states, with input from industry, to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance. It is believed that by developing a consistent tax base and collection system, out-of-state sellers would be encouraged to collect sales tax on behalf of states for which they currently do not have a sales tax collection responsibility. The multistate agreement that states adopt provides:

- uniformity in state and local tax rates;
- simplification of state and local tax rates;
- uniform sourcing rules for all taxable transactions;
- uniform definitions within tax bases; and
- uniform process for administration of exemptions.

Thirty-eight states are currently involved in the Streamlined Sales Tax Project. During the 2002 General Assembly session, the General Assembly enacted Senate Joint Resolution 59, which encourages the Governor to issue an Executive Order enabling the Commonwealth to participate in the Streamlined Sales Tax Project.