



COMMONWEALTH of VIRGINIA

Department of Taxation

December 1, 2010

The Honorable Harry R. Purkey
General Assembly Building, Room 415
Capitol Square
Richmond, Virginia 23219

The Honorable Charles J. Colgan
General Assembly Building, Room 626
Capitol Square
Richmond, Virginia 23219

Dear Delegate Purkey and Senator Colgan:

Enclosed is Report 4 of the 2007-2011 Virginia Retail Sales and Use Tax Expenditure Study prepared by the Department of Taxation ("TAX") pursuant to *Va. Code* § 58.1-609.12.

This is the fourth report in the series on the Miscellaneous Retail Sales and Use Tax exemptions provided by *Va. Code* § 58.1-609.10 and the Nonprofit Entity Retail Sales and Use Tax exemption provided by *Va. Code* § 58.1-609.11. There are nineteen exemption categories scheduled to be studied during the 2007-2011 period, and every five-year period thereafter.

The report includes a detailed analysis of exemptions that pertain to medical equipment and related supplies (*Va. Code* § 58.1-609.10). It also includes updated information concerning the cost of purchases of tangible personal property by nonprofit entities that have applied to TAX and received an exemption certificate. *Va. Code* § 58.1-609.11 previously required an annual report on entities seeking a nonprofit exemption. Legislation enacted during the 2009 General Assembly authorized TAX to combine its Nonprofit Exemption Report with its yearly Retail Sales and Use Tax Expenditure Study. This is the second year the two reports have been combined.

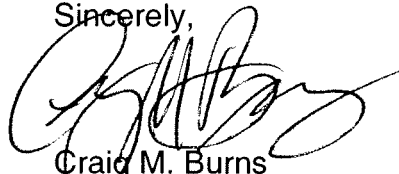
As you will see, the revenues foregone as the result of these exemptions are significant. However, our analysis of the exemptions is not limited solely to foregone

revenues, but also includes detailed information on the policy and economic impacts of each exemption. This includes a thorough analysis of the sales and use tax structures of other states, with particular emphasis on the tax structures of our neighboring states.

The Virginia Retail Sales and Use Tax Expenditure Study Report can be an important tool in the ongoing efforts to oversee the process by which tax exemptions and other tax preferences are granted. Over the past several years, both the executive and legislative branches have developed enhanced budget control and oversight tools to ensure the more effective use of state funds. However, during the same period, Retail Sales and Use Tax exemptions and other tax expenditures have received only limited scrutiny. Unlike expenditures under the budget process, Retail Sales and Use Tax exemptions and preferences tend to remain in effect indefinitely and rarely undergo review to ensure that they are accomplishing in an effective and cost-efficient manner the purpose for which they were enacted. This report will help remedy that situation by evaluating at least that portion of Retail Sales and Use Tax expenditures related to miscellaneous exemptions.

This report is being submitted to the Division of Legislative Automated Systems.

Sincerely,



Craig M. Burns
Tax Commissioner

CMB/kdp
Enclosures

c: The Honorable Richard D. Brown, Secretary of Finance
Division of Legislative Automated Systems

2007 - 2011 Virginia Retail Sales and Use Tax Expenditure Study

Volume 1, Number 4

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

Exemptions Studied:

- Durable Medical Equipment (*Va. Code* § 58.1-609.10(10))
- Motor Vehicle Equipment for Handicapped Persons (*Va. Code* § 58.1-609.10(12))
- Communication Equipment for Handicapped Persons (*Va. Code* § 58.1-609.10 (13))
- Medical Products Purchased by Medicaid Recipients (*Va. Code* § 58.1-609.10(17))
- Nonprofit Entities (*Va. Code* § 58.1-609.11)

December 1, 2010

VIRGINIA RETAIL SALES AND USE TAX EXPENDITURE STUDY

Volume 1, Number 4

Richard D. Brown
Secretary of Finance

Craig M. Burns
Tax Commissioner

December 2010

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

- Durable Medical Equipment (*Va. Code* § 58.1-609.10 (10))
- Motor Vehicle Equipment for Handicapped Persons (*Va. Code* § 58.1-609.10 (12))
- Communication Equipment for Handicapped Persons (*Va. Code* § 58.1-609.10 (13))
- Medical Products Purchased by Medicaid Recipients (*Va. Code* § 58.1-609.10(17)).
- Nonprofit Entities (*Va. Code* § 58.1-609.11)

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 the Department of Motor Vehicles and the Department of Medical Assistance Services, which provided data regarding the exemptions addressed in this report.

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.

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	i
INTRODUCTION	1
MEDICAL RELATED EXEMPTIONS	8
NONPROFIT ENTITIES	22
APPENDICES:	
Appendix 1: Medical Equipment and Supplies Exemptions by State	27
Appendix 2: Prosthetic and Orthopedic Appliances Exemptions by State	31
Appendix 3: Durable Medical Equipment and Supplies Exemption by State	34
Appendix 4: Medical Equipment for Persons with Disabilities Exemption by State	38
ATTACHMENTS:	
<i>Va. Code</i> § 58.1-609.10	41
Survey Instruments	45

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. With the exception of the nonprofit exemption granted pursuant to *Va. Code* § 58.1-609.11, no exemption shall be analyzed more frequently than once every five years. Legislation enacted in 2009 (*Acts of Assembly* 2009, Chapter 24) authorized TAX to combine its yearly Sales and Use Tax Expenditure Study (“SUTES Study”) with its yearly report on the fiscal impact of the Sales and Use Tax exemption for nonprofit entities (“the Nonprofit Exemption Report”), previously required under *Va. Code* § 58.1-609.11. Thus, the fiscal impact of the nonprofit exemption is included in each SUTES Study going forward.

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

- *Va. Code* § 58.1-609.10(10) – Wheelchairs and parts therefore, 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.
- *Va. Code* § 58.1-609.10(12) – Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.

- *Va. Code* § 58.1-609.10(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.
- *Va. Code* § 58.1-609.10(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.

This report includes detailed information on the policy and fiscal impacts of these four 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 Certain Medical Equipment

The exemption for certain types of medical equipment has been in existence since the inception of the Retail Sales and Use Tax in 1966. In addition to exempting medicines and drugs, the original exemption applied to various items, such as crutches, braces, prosthetic devices, and orthopedic appliances, provided such items were dispensed by or sold on prescriptions or work orders of licensed physicians or other medical practitioners. In 1979, the exemption was amended to enable individuals to purchase prosthetic devices, orthopedic appliances, wheelchairs, crutches, braces, catheters, and urinary accessories, provided such purchases were made for their own use. These purchases could be made without a prescription. The exemption was expanded several more times to include insulin and insulin syringes and diabetic chemicals and reagents.

In 1978, a new exemption was enacted for special equipment purchased by handicapped persons to enable them to operate motor vehicles. A special exemption was later enacted in 1985 for special typewriters and computers and related parts and supplies used by handicapped persons to communicate. These items could be purchased exempt, provided they were prescribed by a licensed physician.

In 1995, legislation was introduced and enacted to authorize the exempt purchase of certain, otherwise taxable medical products and supplies purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement. The legislation was introduced to change TAX's general policy that the source of payment or reimbursement for a purchase of general medical supplies had no bearing on an item's exempt status.

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 foregone 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 exemptions that are the subject of Report 4 of the 2007-2011 Virginia Retail Sales and Use Tax Expenditure Study.

Medical Equipment Exemption

Table 1 reflects the total state and local Retail Sales and Use Tax expenditure resulting from the exemption for Durable Medical equipment, which includes wheelchairs, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment, related parts and supplies specifically designed for those products, insulin and insulin syringes, and equipment, devices, or chemical reagents used by a diabetic to test or monitor blood or urine. Table 2 reflects the total state and local Retail Sales and Use Tax expenditure resulting from the exemption for handicapped motor vehicle equipment. Table 3 reflects the total state and local Retail Sales and Use Tax expenditure resulting from the exemption for communication equipment for the handicapped. Table 4 reflects the total state and local Retail Sales and Use Tax expenditure resulting from the exemption for medical products and supplies purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

Table 1: Total State and Local Sales Tax Expenditure Resulting from the Durable Medical Equipment Exemption

	<u>State FY 2010</u>	<u>State FY 2011</u>	<u>State FY 2012</u>
<i>General Fund-Unrestricted</i>	\$1,165,234	\$1,155,400	\$1,176,093
<i>General Fund-Restricted</i>	\$463,332	\$459,421	\$467,650
<i>Transportation Trust Fund</i>	\$238,094	\$236,085	\$240,313
<i>Local Option</i>	\$476,189	\$472,170	\$480,626
Total Sales and Use Tax Impact	\$2,342,850	\$2,323,076	\$2,364,682

Table 2: Total State and Local Sales Tax Expenditure Resulting from the Handicapped Motor Vehicle Equipment Exemption

	<u>State FY 2010</u>	<u>State FY 2011</u>	<u>State FY 2012</u>
<i>General Fund-Unrestricted</i>	\$459,900	\$456,019	\$464,186
<i>General Fund-Restricted</i>	\$182,870	\$181,327	\$184,574
<i>Transportation Trust Fund</i>	\$93,972	\$93,179	\$94,848
<i>Local Option</i>	\$187,945	\$186,358	\$189,696
Total Sales and Use Tax Impact	\$924,687	\$916,883	\$933,304

Table 3: Total State and Local Sales Tax Expenditure Resulting from the Exemption for Communication Equipment for the Handicapped

	<u>State FY 2010</u>	<u>State FY 2011</u>	<u>State FY 2012</u>
<i>General Fund-Unrestricted</i>	\$164	\$163	\$166
<i>General Fund-Restricted</i>	\$65	\$65	\$66
<i>Transportation Trust Fund</i>	\$34	\$33	\$34
<i>Local Option</i>	\$67	\$67	\$68
Total Sales and Use Tax Impact	\$330	\$327	\$333

Table 4: Total State and Local Sales Tax Expenditure Resulting from the Exemption for Medical Products Purchased through DMAS Recipient Agreements

	<u>State FY 2010</u>	<u>State FY 2011</u>	<u>State FY 2012</u>
<i>General Fund-Unrestricted</i>	\$431,926	\$428,280	\$435,951
<i>General Fund-Restricted</i>	\$171,746	\$170,297	\$173,347
<i>Transportation Trust Fund</i>	\$88,256	\$87,511	\$89,079
<i>Local Option</i>	\$176,512	\$175,023	\$178,157
Total Sales and Use Tax Impact	\$ 868,440	\$861,111	\$876,533

Nonprofit Entities

Under the authority requiring this study, TAX is restricted from studying any exemption provided by *Va. Code* § 58.1-609.10 more frequently than once every five years. However, *Va. Code* § 58.1-609.11 previously required an annual report on entities seeking a nonprofit exemption. Legislation enacted during the 2009 General Assembly authorized TAX to combine its Nonprofit Exemption Report with its yearly Retail Sales and Use Tax Expenditure Study. 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

Retail Sales and Use Tax Expenditure Study an estimate of the foregone 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.

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.

2010	\$143,554,116
2011	\$145,812,223*
2012	\$148,540,370*

* 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 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 each subgroup, TAX is required to repeat the process beginning with the subgroup of exemptions for which a report was made in 2007. With the exception of the nonprofit exemption granted pursuant to *Va. Code* § 58.1-609.11, no exemption shall be analyzed more frequently than once every five years. Legislation enacted in 2009 (*Acts of Assembly* 2009, Chapter 24) authorized TAX to combine its yearly Retail Sales and Use Tax Expenditure Study (“SUTES study”) with its yearly report on the fiscal impact of the Sales and Use Tax exemption for nonprofit entities (“the Nonprofit Exemption Report”), previously mandated by *Va. Code* § 58.1-609.11. Thus, the fiscal impact of the nonprofit exemption is included in each Sales and Use Tax Expenditure Study going forward.

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:

<u>Citation</u>	<u>Volume</u>	<u>Year</u>	<u>Exemption</u>
<i>Code of Va.</i> § 58.1-609.11	1	2007	Nonprofit Entities
<i>Code of Va.</i> § 58.1-609.10(15)	1	2007	Donations Withdrawn from Inventory
<i>Code of Va.</i> § 58.1-609.10(16)	1	2007	Nonprofit churches
<i>Code of Va.</i> § 58.1-609.10(5)	2	2008	Food Stamp and WIC Purchases
<i>Code of Va.</i> § 58.1-609.10(8)	2	2008	School Lunches and Textbooks
<i>Code of Va.</i> § 58.1-609.10(9)	3	2009	Medicines and Drugs
<i>Code of Va.</i> § 58.1-609.10(11)	3	2009	Dialysis Drugs and Supplies

<i>Code of Va. § 58.1-609.10(14)</i>	3	2009	Nonprescription Drugs and Nonprescription Drug Samples
<i>Code of Va. § 58.1-609.10(17)</i>	4	2010	Medical Products and Supplies Purchased by Medicaid Recipients
<i>Code of Va. § 58.1-609.10(10)</i>	4	2010	Durable Medical Equipment
<i>Code of Va. § 58.1-609.10(12)</i>	4	2010	Motor Vehicle Equipment for Handicapped Persons
<i>Code of Va. § 58.1-609.10(13)</i>	4	2010	Communication Equipment for Handicapped Persons
<i>Code of Va. § 58.1-609.10(1)</i>	5	2011	Domestic Consumption of Heating Fuels
<i>Code of Va. § 58.1-609.10(2)</i>	5	2011	Occasional Sales
<i>Code of Va. § 58.1-609.10(3)</i>	5	2011	Purchases for Taxable Lease
<i>Code of Va. § 58.1-609.10(4)</i>	5	2011	Delivery of Property outside VA
<i>Code of Va. § 58.1-609.10(6)</i>	5	2011	Property Purchased for Maintenance of Nuclear Power Plants outside VA
<i>Code of Va. § 58.1-609.10(18)</i>	5	2011	Multifuel Heating Stoves for Residential Use
<i>Code of Va. § 58.1-609.10(19)</i>	5	2011	Fabrication of Animal Meats, Grains, Vegetables, or other Foodstuffs

This is the fourth report of the 2007-2011 Retail Sales and Use Tax Expenditure Study and includes a detailed analysis of exemptions that pertain to:

- *Va. Code § 58.1-609.10(10)* – Wheelchairs and parts, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment and devices, related parts and supplies, and insulin and insulin syringes.
- *Va. Code § 58.1-609.10(12)* – Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.
- *Va. Code § 58.1-609.10(13)* - Special typewriters and computers and related parts and supplies designed for those products used by handicapped persons to communicate when such equipment is prescribed by a licensed physician.
- *Va. Code § 58.1-609.10(17)* – Certain medical products and supplies when purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

This report includes detailed information on the policy and fiscal impacts of these four 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 SUTES 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.

Nonprofit Entities

Under the authority requiring this study, TAX is restricted from studying any exemption provided by *Va. Code* § 58.1-609.10 more frequently than once every five years. However, *Va. Code* § 58.1-609.11 previously required an annual report on entities seeking a nonprofit exemption. Legislation enacted during the 2009 General Assembly authorized TAX to combine its Nonprofit Exemption Report with its yearly Retail Sales and Use Tax Expenditure Study. 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 Retail Sales and Use Tax Expenditure Study an estimate of the foregone 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.

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, the Miscellaneous Retail Sales and Use Tax 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.

Revenue Analysis Methodology

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.

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.

Report Organization

This report contains a detailed analysis of the medical exemptions, as set forth below:

- *Va. Code § 58.1-609.10(10)* – Wheelchairs and parts, 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.
- *Va. Code § 58.1-609.10(12)* – Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.
- *Va. Code § 58.1-609.10(13)* - Special typewriters, computers, and related parts and supplies specifically designed for products used by handicapped persons to communicate when the equipment is prescribed by a licensed physician.
- *Va. Code § 58.1-609.10(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.

A summary of each exemption is provided. For each exemption, 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.

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- 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 that 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.

The second portion of this study provides an estimate of the foregone revenue attributable to the nonprofit entity exemption. The study provides a summary of the nonprofit entity exemption, describes the background of the exemption, and sets forth the new process under which nonprofit organizations are eligible for exemption from the Retail Sales and Use Tax.

MEDICAL RELATED EXEMPTIONS

EXEMPTIONS FOR MEDICAL EQUIPMENT AND SUPPLIES

AUTHORIZATION

This grouping includes four retail sales and use tax exemptions for various types of medical equipment and supplies. These exemptions are set forth in the *Code of Virginia* as follows:

Va. Code § 58.1-609.10(10) – Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, and other durable medical equipment and devices, and related parts and supplies specifically designed for those products; 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. (Enacted 1966; Amended 1979, 1980, 1982, 1984).

Va. Code § 58.1-609.10(12) – Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate such motor vehicle. (Enacted 1978).

Va. Code § 58.1-609.10(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. (Enacted 1985).

Va. Code § 58.1-609.10(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. (Enacted 1995).

EXEMPTIONS' SUMMARIES

Medical Equipment. This exemption generally extends to the following types of items:

- wheelchairs and wheelchair parts, braces, crutches,
- prosthetic devices;
- orthopedic appliances;
- catheters and urinary accessories;
- insulin and insulin syringes and equipment, devices and chemical reagents which may be used by a diabetic to test or monitor blood or urine; and
- other durable medical equipment

For equipment to qualify as exempt durable medical equipment, it must

- be able to withstand repeated use;
- be primarily and customarily used to serve a medical purpose;
- generally not be useful to a person in the absence of illness or injury; and
- be appropriate for use in the home.

Whether a particular item qualifies for exemption depends not only on whether it meets all of the criteria set forth above, but also upon the identity of the purchaser and the manner in which the equipment is purchased. Only those items that are purchased by or on behalf of an individual are exempt from the Retail Sales and Use Tax.

The fact that an item is purchased from a medical equipment supplier or is purchased on a physician's prescription is not dispositive of its exempt status. The same holds true for items for which a patient receives reimbursement through Medicare or private insurance. Thus, in order for medical equipment to be exempt, it must meet the specific exemption criteria.

Special Motor Vehicle Equipment. This provision authorizes an exemption for purchases of special equipment which enable handicapped persons to operate a motor vehicle provided such purchases are made by the handicapped person. The equipment is also exempt from the motor vehicle sales and use tax pursuant to Va. Code § 58.1-2401.

Typewriters and Computers for the Handicapped. Virginia law also provides an exemption for typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate. While the durable medical equipment exemption extends to various communication aids for the physically handicapped and writing and speech aids for the hearing impaired, this exemption is limited to equipment when prescribed by a licensed physician.

Supplies Purchased through DMAS Agreements. An exemption is also available for otherwise taxable medical supplies when purchased by a Medicaid recipient through a

Department of Medical Assistance Services provider agreement. The exemption extends to such items as bandages, gauze dressings, incontinence products, and wound-care products.

RATIONALE AND BACKGROUND

RATIONALE

Each of the exemptions set forth in this study was enacted as a means of providing tax relief to people who, because of medical necessity, must purchase the various items or types of equipment in order to facilitate their recovery, rehabilitation, or return to normal or near-normal functioning.

LEGISLATIVE HISTORY

Prior to enactment of the general durable medical equipment exemption in 1984, the exemption had evolved by the addition of various specific items to the tax exempt category over the course of time. The following briefly outlines how the durable medical equipment exemption and the other exemptions in this grouping evolved.

1966 - one of the original exemptions from the sales tax, the exemption for medicines and drugs included various medical equipment, including crutches, braces, artificial eyes, hearing aids, prosthetic devices and orthopedic appliances when dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, or opticians.

1978 – a new exemption was enacted for special equipment purchased by handicapped persons to enable them to operate motor vehicles.

1979 – the exemption was amended to enable individuals to purchase prosthetic devices, orthopedic appliances, wheelchairs, crutches, braces, catheters, and urinary accessories, provided such purchases were made for their own use. Purchasers without a prescription were also eligible for the exemption.

1980 – the exemption was amended to include insulin and insulin syringes and to permit purchases of various items on behalf of an individual.

1982 – the exemption was expanded to include diabetic chemicals and reagents.

1984 – a new exemption was enacted for drugs and supplies used in hemodialysis and peritoneal dialysis.

1985 – a new exemption was enacted for 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.

1995 – a new exemption was enacted for medical products and supplies, such as bandages, gauze dressings, incontinence products, and wound care products, when purchased by a Medicaid recipient through a DMAS provider agreement.

Insulin and insulin syringes were added to the exemption for nonprescription purchases of various types of medical equipment since insulin was a Schedule II drug that had to be sold pursuant to a prescription, yet because diabetics were the only ones who used it, stores were selling it to them without a prescription.

While the controlled drug provisions of the medicines and drug exemption currently set forth in Va. Code § 58.1-609.10(9) had originally been interpreted as exempting kidney dialysis equipment, hemodialysis and peritoneal drugs and supplies when purchased by an individual for his own use, this exemption was enacted to create a specific exemption for any purchases of dialysis drugs, equipment, and supplies, regardless of whether purchased by physicians, hospitals, etc., or persons medically in need of such drugs or supplies.

SCOPE

Durable Medical Equipment. Unlike the original exemption contained in the general medicines and drugs exemption, the exemption for durable medical equipment, hereinafter referred to as “DME,” is not dependent upon whether an item is sold on the prescription or work order of a physician or other health professional. Rather, the equipment must be purchased by or on behalf of an individual and must meet the criteria set forth in the statute. These criteria were adapted from the federal Medicare law.

Purchases of DME by a profit hospital, licensed nursing home, home for adults or by a licensed physician for use in his professional practice are deemed to be purchases on behalf of an individual only if purchased for a specific patient. Thus items withdrawn from an inventory of items purchased in bulk, even if modified or fitted for a specific individual, are not deemed to be purchased on behalf of an individual. However, nonprofit medical-related entities that have satisfied the criteria and followed the procedure set forth in Va. Code § 58.1-609.11 and therefore qualify for the nonprofit exemption, may purchase durable medical equipment exempt of the tax, whether for a specific individual or in bulk.

Other entities not specifically listed in the statute would not qualify for the exemption if DME is purchased in bulk. This policy is consistent with the interpretation by the

Virginia Supreme Court in Commonwealth v. Bluefield Sanitarium and the opinion of the Circuit Court of the City of Richmond in Biomedical Applications of Roanoke v. Commonwealth. (See Medicines and Drugs section of this report).

Included with the category of exempt durable medical equipment are various types of oxygen equipment, respiratory therapy equipment, and patient care equipment, including prosthetic devices and orthopedic appliances. As part of 23VAC10-210-940, the regulation interpreting this exemption, TAX has developed an exemplary, but not all inclusive, list of exempt durable medical equipment. Additionally, TAX has deemed the following types of equipment to qualify as exempt DME:

- TDD, telecaptioners, and alert devices;
- specialized hospital beds;
- continuous passive motion devices and kits;
- post operative braces;
- cardiac pacemakers; and
- infusion pumps.

TAX has identified several items that do not meet the durable medical equipment test, including breast pumps, intrauterine contraceptive devices, incontinence pads, and spas. In addition, TAX has ruled that patient gowns and bathing suits specifically designed for mastectomy patients are taxable.

The DME exemption also extends to certain supplies specifically designed for use with DME. Thus, the same item may be taxable in one instance and exempt in another. For example, liquid nutrients for use with enteral/parenteral equipment are exempt, yet those sold as oral dietary supplements are taxable. In addition, patient kits, which are attached to a device by Velcro straps and are discarded when sanitary conditions dictate, are considered an intrinsic part of the rehabilitative process in that they are designed specifically for use with the devices and thus are exempt. However, general purpose supplies, bandages, tape, and gauze dressings are generally taxable, even if used with exempt durable medical equipment.

In addition, items such as special diabetic foods, sweeteners, cookbooks, or supplies used in conjunction with insulin (including alcohol, sterile pads or sterilizing equipment) do not qualify for the exemption. However, rubbing alcohol, alcohol swabs and similar items with medicinal qualities constitute nonprescription drugs that are exempt from the Retail Sales Tax pursuant to *Va. Code* § 58.1-609.10(14), which was enacted in 1998.

Special Motor Vehicle Equipment. Special equipment installed on a motor vehicle which allows a handicapped person to operate the vehicle may be purchased exempt from the tax by a handicapped person. Such equipment is also exempt from the motor vehicle sales and use tax (*Va. Code* § 58.1-2401). Included within the category of

exempt equipment are wheelchair lift equipment and special controls.

Typewriters and Computers for the Handicapped. Under the DME exemption, communications aids for the physically handicapped and writing and speech aids for the impaired may be purchased exempt of the Retail Sales and Use Tax, provided these items meet the requirements for durable medical equipment. The exemption for typewriters and computers for the handicapped, however, extends to certain other communications aids for the handicapped, provided these items are prescribed by a licensed physician. TAX has determined that a personal optical scanner that converts printed information into synthesized speech is exempt under this provision as computers and related parts when prescribed by a physician.

Medical Products for Medicaid Recipients. Medical products and supplies which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products that are purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement may be purchased exempt of the Retail Sales and Use Tax.

This legislation was introduced in part due to TAX's policy with respect to general purpose medical supplies and its determination that the source of payment or reimbursement for a purchase has no bearing on an item's exempt status. Generally, the application of the sales tax to transactions in which items are sold to individuals, but submitted to a third party payor for payment, is determined as of the time of sale to the individual, and does not depend upon the availability or source of reimbursement for the items sold. For example, if the durable medical equipment is exempt and billed to a third party, it remains exempt. However, if it is not considered exempt durable medical equipment and no other exemption applies, then it is taxable, regardless of to whom it is billed.

SIMILAR EXEMPTIONS

Dialysis Equipment and Supplies. The exemption extends to all drugs, supplies and equipment that are purchased for and used in the actual treatment of patients. Exempt items include, but are not limited to, solutions, needles, syringes, tape, bandages, alcohol, and catheters. General purpose supplies such as face masks, paper towels, and trays, as well as examination tables and instruments such as stethoscopes, forceps, and surgical scissors are taxable.

This exemption is unlike the DME exemption in that it is applicable regardless of the nature of the purchaser. Thus, **any** hospital or other medical related entity, physician, or any individual may purchase dialysis drugs, equipment, and supplies exempt from the tax. This exemption effectively provides a broader exemption to physicians, hospitals, and clinics specializing in kidney dialysis treatment than available to other physicians and hospitals.

Medicines and Drugs. Va. Code § 58.1-609.10(9) provides an exemption from the tax for prescription sales of medicines and drugs; however, this exemption does not extend to devices. The exemptions for drugs used in dialysis and for insulin and insulin syringes overlap with this exemption.

Nonprescription Drugs and Proprietary Medicines. Nonprescription drugs and proprietary medicines used in the cure, mitigation, treatment or prevention of disease in human beings are also exempt from the tax pursuant to Va. Code § 58.1-609.10(14). Thus, some general purpose supplies, such as rubbing alcohol, alcohol swabs, and hydrogen peroxide, may be purchased exempt from the tax under this exemption. However, like the medicines and drugs exemption, this exemption does not extend to devices. Thus, bandages, gauze, and similar types of items will remain taxable.

METHODOLOGY

Separate datasets were obtained for each of the components of the medical equipment and supplies exemption, including durable medical equipment, communication equipment for the handicapped, motor vehicle equipment for the handicapped, and otherwise taxable medical supplies purchased through DMAS agreements.

The impact from the repeal of durable medical equipment was derived from a survey conducted on durable medical equipment suppliers in Virginia. The list of suppliers was compiled from a Medicare database and queried by product type.

Various items of communication equipment for the handicapped were considered in developing the revenue estimate for this exemption, including typewriters, computers, voice prosthetics, electronic larynx, voice amplifiers, and personal optical scanners which convert printed information into synthesized speech for the blind. The resulting estimate is a subset of DME.

In order to develop an estimate from the repeal of the motor vehicle equipment for handicapped persons, TAX obtained a list of suppliers from the Virginia Department of Motor Vehicles. Applicable equipment used in this estimate include wheelchair lifts and special controls, hand controls, left foot accelerators, pedal extensions, electronic gas and brakes, reduced and zero effort steering, smaller steering wheel, horizontal steering, joystick control, lower extremity steering, and client specific modifications.

REVENUE ANALYSIS

Durable Medical Equipment.

Based on TAX's data, it is estimated that the state and local revenues would increase by approximately \$2,343,000 in Fiscal Year 2010, \$2,323,000 in Fiscal Year 2011 and \$2,365,000 in Fiscal Year 2012 if the exemption for durable medical equipment is repealed.

Table 1: Total State and Local Sales Tax Expenditure Resulting from the Durable Medical Equipment Exemption

	<u>State</u> <u>FY</u> <u>2010</u>	<u>State</u> <u>FY</u> <u>2011</u>	<u>State</u> <u>FY</u> <u>2012</u>
<i>General Fund-Unrestricted</i>	\$1,165,234	\$1,155,400	\$1,176,093
<i>General Fund-Restricted</i>	\$463,332	\$459,421	\$467,650
<i>Transportation Trust Fund</i>	\$238,094	\$236,085	\$240,313
<i>Local Option</i>	\$476,189	\$472,170	\$480,626
Total Sales and Use Tax Impact	\$2,342,850	\$2,323,076	\$2,364,682

Handicapped Motor Vehicle Equipment.

Based on TAX's data obtained from responses to a survey of vendors of motor vehicle equipment for handicapped persons, it is estimated that the state and local revenues would increase by \$925,000 in Fiscal Year 2010, \$917,000 in Fiscal Year 2011, and \$933,000 in Fiscal Year 2012 if the exemption for handicapped motor vehicle equipment is repealed. The items taken into account in this estimate include wheelchair lifts and special controls, hand controls, left foot accelerators, pedal extensions, electronic accelerators and brakes, reduced/zero effort steering, smaller steering wheels, horizontal steering, joystick controls, lower extremity steering, and client specification modifications.

Table 2: Total State and Local Sales Tax Expenditure Resulting from the Handicapped Motor Vehicle Equipment Exemption

	<u>State</u> <u>FY</u> <u>2010</u>	<u>State</u> <u>FY</u> <u>2011</u>	<u>State</u> <u>FY</u> <u>2012</u>
<i>General Fund-Unrestricted</i>	\$459,900	\$456,019	\$464,186
<i>General Fund-Restricted</i>	\$182,870	\$181,327	\$184,574
<i>Transportation Trust Fund</i>	\$93,972	\$93,179	\$94,848
<i>Local Option</i>	\$187,945	\$186,358	\$189,696
Total Sales and Use Tax Impact	\$924,687	\$916,883	\$933,304

Typewriters and Computers for the Handicapped.

This exemption is a subset of durable medical equipment. Thus, the revenue impact of repealing this provision should not be added to the revenue impact for repealing the durable medical exemption provision. Based on TAX's data, it is estimated that the state and local revenues would increase by \$300 in fiscal years 2010, 2011 and 2012 if the exemption for communication equipment for the handicapped is repealed.

Table 3: Total State and Local Sales Tax Expenditure Resulting from the Exemption for Communication Equipment for the Handicapped

	<u>State</u> <u>FY</u> <u>2010</u>	<u>State</u> <u>FY</u> <u>2011</u>	<u>State</u> <u>FY</u> <u>2012</u>
<i>General Fund-Unrestricted</i>	\$164	\$163	\$166
<i>General Fund-Restricted</i>	\$65	\$65	\$66
<i>Transportation Trust Fund</i>	\$34	\$33	\$34
<i>Local Option</i>	\$67	\$67	\$68
Total Sales and Use Tax Impact	\$330	\$327	\$333

Medical Products Purchased through DMAS Recipient Agreements

Based on TAX's data, obtained from the Department of Medical Assistance Services, it is estimated that state and local revenues would increase by \$868,000 in Fiscal Year 2010, \$861,000 in Fiscal Year 2011 and \$877,000 in Fiscal Year 2012 if the exemption for medical products purchased through DMAS recipient agreements is repealed.

Table 4: Total State and Local Sales Tax Expenditure Resulting from the Exemption for Medical Products Purchased through DMAS Recipient Agreements

	<u>State</u> <u>FY</u> <u>2010</u>	<u>State</u> <u>FY</u> <u>2011</u>	<u>State</u> <u>FY</u> <u>2012</u>
<i>General Fund-Unrestricted</i>	\$431,926	\$428,280	\$435,951
<i>General Fund-Restricted</i>	\$171,746	\$170,297	\$173,347
<i>Transportation Trust Fund</i>	\$88,256	\$87,511	\$89,079
<i>Local Option</i>	\$176,512	\$175,023	\$178,157
Total Sales and Use Tax Impact	\$ 868,440	\$861,111	\$876,533

BENEFICIARIES

Beneficiaries of these exemptions include purchasers of durable medical equipment, including wheelchairs, braces, crutches, prosthetic devices, orthopedic appliances, and catheters; purchasers of insulin, insulin syringes, and devices and chemical reagents

used by diabetics; handicapped individuals purchasing special motor vehicle equipment; handicapped individuals purchasing special typewriters and computers and related parts and supplies for communicating when the equipment is prescribed by a licensed physician; and Department of Medical Assistance Services providers when selling medical products and supplies, otherwise taxable, to a Medicaid recipient through a DMAS provider agreement.

STATE COMPARISONS

OTHER STATES

Of the 45 sales tax jurisdictions (including Washington D.C.):

Medical Equipment

Generally

- 4 fully exempt such sales;
- 15 exempt certain specified items as does Virginia;
- 1 taxes at a reduced rate of 1 percent (Illinois);
- 1 exempts supplies furnished as part of a doctor's services (Colorado); and
- 24 fully tax such sales.

By Prescription

- 11 fully exempt such sales;
- 20 exempt certain specified items as does Virginia;
- 1 taxes at a reduced rate of 1 percent (Illinois); and
- 13 fully tax such sales.

Oxygen Equipment and Supplies

- 14 fully exempt such sales as does Virginia;
- 1 exempts certain specified items (Vermont);
- 14 exempt if prescribed;
- 3 exempt if for home use;
- 1 exempts if prescribed and for home use (Michigan);
- 1 taxes at a reduced rate of 1 percent (Illinois); and
- 11 fully tax such sales.

Physical and Occupational Therapy Equipment

- 3 fully exempt such sales;
- 1 exempts certain specified items (Vermont) as does Virginia;

- 1 exempts if prescribed (Idaho);
- 3 exempt certain specified items if prescribed;
- 1 exempts therapeutic devices used to correct or treat a human physical disability or surgically created abnormality (Colorado);
- 1 taxes at a reduced rate of 1 percent (Illinois); and
- 35 fully tax such sales.

Prosthetic Devices

- 14 exempt both prosthetic devices and orthopedic appliances, as does Virginia.
- 13 require that prosthetic devices be purchased pursuant to a prescription or be purchased by or on behalf of a patient in order to be exempt.
- 6 tax both prosthetic devices and orthopedic appliances.
- 7 provide a full exemption for prosthetic devices, regardless of whether purchased pursuant to a prescription or whether purchased on behalf of a specific individual.
- 2 require prosthetic devices be purchased by or on behalf of an individual to be exempt.
- 1 exempts orthopedic appliances, but taxes prosthetic devices (Maryland).
- 1 taxes both prosthetic devices and orthopedic devices at a reduced rate (Illinois).
- 1 provides a specific list of items that include some prosthetic and some orthopedic devices (Massachusetts).

Durable Medical Equipment

Specific Definition

- 28 specifically define “durable medical equipment” as does Virginia;
- 17 have no specific definition for “durable medical equipment”; and

Generally

- 16 generally tax sales of durable medical equipment;
- 9 generally exempt such sales as does Virginia;
- 5 generally exempt those items contained on a specific list; and
- 3 must be sold to Medicaid or Medicare recipients and paid for or reimbursed by Medicaid or Medicare.
- 12 exempt only if prescribed by a physician.

Of the 19 jurisdictions generally exempting some/all durable medical equipment, 5 including Virginia, require that in order for the equipment to be exempt, it must be purchased by or on behalf of an individual. Twelve states exempt purchases of durable medical equipment only if the equipment is prescribed by a physician.

Typewriters and Computers for the Handicapped

- 41 generally tax sales of typewriters and computers specifically designed for the handicapped;
- 1 taxes such equipment at a reduced rate (Illinois);
- 1 exempts equipment used by the hearing impaired to communicate by telephone (New York)
- 1 exempts equipment if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently (Arizona).
- 1 requires a prescription, as does Virginia (Texas);

Motor Vehicle Equipment for the Handicapped

- 20 generally tax sales of motor vehicle equipment for the handicapped;
- 15 generally exempt such sales as does Virginia;
- 8 exempt only wheelchair lifts; and
- 2 exempts only that equipment included in the sale of the motor vehicle

See Appendices 1 through 4 for a complete breakdown of the tax treatment of the above items as well as some other related items in the 45 sales tax jurisdictions.

BORDER STATES

Medical Equipment – Of Virginia's border jurisdictions, the District of Columbia, North Carolina, Tennessee and West Virginia generally tax medical equipment. Kentucky exempts certain specified equipment as Virginia does, and Maryland fully exempts such equipment. All of the other border jurisdictions also provide exemptions for certain medical equipment when prescribed. Kentucky, Maryland, and Tennessee exempt oxygen equipment regardless of whether the equipment is sold pursuant to a prescription as Virginia does, while the District of Columbia and West Virginia only exempt prescribed oxygen equipment and supplies. All of the border jurisdictions generally tax physical/occupational therapy equipment.

Durable Medical Equipment - Of Virginia's border jurisdictions, only North Carolina and Maryland provide exemptions for specific durable medical equipment, as does Virginia. The District of Columbia, Kentucky, Tennessee and West Virginia tax such equipment. None of the border states requires that in order for equipment to be exempt, it must be purchased by or on behalf of an individual as does Virginia.

Prosthetic Devices – The District of Columbia and North Carolina are the only two border states that exempt both prosthetic devices and orthopedic appliances. Repair and replacement parts for these items are subject to tax in both states. Kentucky, Tennessee and West Virginia all provide an exemption for prosthetic devices, but tax orthopedic devices. Repair and replacement parts for prosthetic devices are also exempt in Tennessee. In Maryland, prosthetic devices are subject to tax while orthopedic appliances are exempt. Repair and replacement parts for both are also subject to tax.

Equipment for Persons with Disabilities - Only Maryland and Tennessee provide exemptions similar to Virginia's for motor vehicle equipment for the handicapped. Of these states, only Kentucky provides an exemption for wheelchair lifts. Similarly, none of the border states provide an exemption similar to Virginia's for typewriters and computers used by handicapped persons to communicate.

COURT CASES

There are no Virginia Supreme Court cases that specifically address the Retail Sales and Use Tax implications of purchases of medical equipment and supplies

DIRECT OR INDIRECT GOVERNMENT ASSISTANCE

Individuals purchasing exempt medical equipment and supplies may receive reimbursement for all or a portion of the costs of such through federal or state funded insurance programs.

LICENSURE

Physicians, and other practitioners of the healing arts, are required to be licensed by the state. Virginia law generally restricts the dispensing of prescription devices and oxygen, sterile water and saline, and hypodermic needles and syringes to either a permitted pharmacy or a permitted medical equipment supplier, therefore, the Department of Medical Assistance Services ("DMAS") which administers the Medicaid program in Virginia usually requires proof of Virginia licensure in order for a company to be credentialed as a Medicaid provider. Physicians in Virginia may dispense under certain circumstances without being required to obtain a license to dispense from the Board of Pharmacy. Those circumstances include the dispensing of manufacturer's samples appropriately labeled as samples and not for sale, dispensing in a bona fide medical emergency, and dispensing when pharmaceutical services are not otherwise available. Except for in those circumstances, physicians must be licensed by the Virginia Board of Pharmacy and have a Drug Enforcement Agency number in order to handle drugs.

EXTERNAL MANDATES

There are no apparent state or federal statutory or constitutional mandates having an impact on these exemptions.

OTHER STATE AND LOCAL TAX BURDENS

Purchasers of medical equipment and supplies which do not meet the statutory or regulatory requirements under these or other exemptions are required to pay the tax on such. For-profit hospitals, nursing homes, and other entities not specifically exempt by law are taxable on their purchases of durable medical equipment in bulk. In addition, purchasers of various optional equipment for their motor vehicles which are generally not necessary and purchasers of general computers and typewriters are required to pay the tax on such purchases.

SIMILAR TAXPAYERS

Purchasers of medical equipment and supplies which do not meet the statutory or regulatory requirements under these or other exemptions are required to pay the tax on such. For-profit hospitals, nursing homes, and other entities not specifically exempt by law are taxable on their purchases of durable medical equipment in bulk. In addition, purchasers of various optional equipment for their motor vehicles which are generally not necessary and purchasers of general computers and typewriters are required to pay the tax on such purchases.

NONPROFIT EXEMPTION

NONPROFIT ENTITY EXEMPTION

SUMMARY

The 2003 General Assembly enacted Chapters 757 and 758, 2003 *Acts of Assembly* (House Bill 2525 and Senate Bill 743) to simplify the process of qualifying nonprofit organizations for sales and use tax exemptions. As part of this legislation, TAX 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.

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 Retail 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 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 at least \$750,000 in the previous year, the entity must provide a financial review performed by an independent certified public accountant. If the entity's gross annual revenue was at least \$1 million in the previous year, the Department has the discretion to require the entity to provide a financial audit performed by an independent certified public accountant.
- The entity must provide TAX with a copy of its federal Forms 990, 990 EZ, 990-N 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) (*Va. Code* § 58.1-609.8) July 1, 2004
Civic and community service (second half) (*Va. Code* § 58.1 -609.8) July 1, 2005
Cultural and Miscellaneous (*Va. Code* §§ 58.1 -609.9 and 58.1 -609.10) July 1, 2006
Educational (*Va. Code* § 58.1 -609.4) July 1, 2007
Medical-Related (*Va. Code* § 58.1 -609.7) July 1, 2008

TECHNICAL AMENDMENTS TO NEW EXEMPTION PROCESS

There have been several technical amendments made to this process since the nonprofit exemption was first enacted in 2003.

In 2004, Chapters 515 and 536, *Acts of Assembly* (House Bill 515 and Senate Bill 585), clarified that churches have two options. They may continue using the self-issued

exemption certificate, which entitles them to the Retail 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 may obtain an exemption via the new process from July 1, 2004 through June 30, 2006. This bill also grandfathered the exemption from collecting the tax 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 as it applies to taxable services for certain organizations. Under Chapters 42 and 89, 2005 *Acts of Assembly* (House Bill 2100 and Senate Bill 1105), organizations holding a valid exemption as of June 30, 2003, may 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 Retail 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 *Va. Code* § 58.1-3606. Under Chapter 338, Acts of Assembly (House Bill 576) the exemption was expanded to include tangible personal property used for recording and reproducing services. The exemption applies to 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.

Legislation passed in 2007 expanded the Retail 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 *Va. Code* § 58.1-3606. 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. This report studies the cost of exempt purchases made by churches under the nonprofit entity exemption. The cost of the self-issued exemption certificate authorized under *Va. Code* § 58.1-609.10(16) was addressed in Report 1 of the 2007-2011 SUTES Study.

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 were required to meet in order to qualify for a Retail 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 changed 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 had to be performed by an independent certified public accountant. Entities with more than \$500,000 of gross annual revenue were still required to provide a full audit performed by an independent certified public accountant. Entities with less than \$250,000 of gross annual revenue continued 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) allowed nonprofit organizations with 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 had to be performed by an independent certified public accountant. Nonprofit organizations with gross annual revenues of \$1 million or greater were required to provide a full financial audit performed by an independent certified public accountant. Entities with less than \$750,000 of gross annual revenue had no requirement to provide any type of financial audit or review.

In 2009, legislation was enacted that modified these audit requirements again. House Bill 2330 (Chapter 106) and Senate Bill 1222 (Chapter 526) required that nonprofit organizations with \$750,000 in gross annual revenues in the previous year file a financial review performed by an independent certified public accountant. For nonprofit organizations with at least \$1 million in gross annual revenues in the previous year, TAX has the discretion to require that entity to provide a financial audit in lieu of a financial review.

ONLINE EXEMPTION PROCESS

Since June 2003, over 12,000 nonprofit organizations have accessed Nonprofit Online. Nonprofit Online, (<https://www.npo.tax.virginia.gov>) is an online application that 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 its 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.

REVENUE IMPACT

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. 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.

Exemption certificates issued for nonprofit entities in Fiscal Year 2010 totaled 1,960. This included 993 renewed exemption certificates and 967 new exemptions. Each organization granted a new exemption retains that exemption for a five-year period, after which time, they must renew their exemption.

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

2010	\$143,554,116
2011	\$145,812,223*
2012	\$148,540,370*

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

APPENDICES

**APPENDIX 1
MEDICAL EQUIPMENT AND SUPPLIES**

	Generally	By Prescription	Oxygen Equipment and Supplies	Physical/Occupational Therapy Equipment
Alabama	T	T	T	T
Arizona	T	T	E*	T
Arkansas	T	E	E*	T
California	T	E*	E	T
Colorado	T*	T	T	T**
Connecticut	E*	E*	E	T
District of Columbia	T	E*	E*	T
Florida	E*	E	E*	E*
Georgia	E*	T	E*	T
Hawaii	T	T	T	T
Idaho	T	E	E*	E*
Illinois	T*	T*	T*	T*
Indiana	E*	E*	E	T
Iowa	E	E*	E	T
Kansas	T	E*	E*	T
Kentucky	E*	E*	E	T
Louisiana	T	E	E	E
Maine	E*	T	T	T
Maryland	E	E	E	T
Massachusetts	E*	T	E*	T
Michigan	T	E*	E*	T
Minnesota	E*	T	E*	T
Mississippi	T	T	T	T
Missouri	T	T	E	T
Nebraska	T	E	E*	T
Nevada	T	T	T	T
New Jersey	E*	E*	E*	T
New Mexico	T	T	T	T
New York	E	E	E	E
North Carolina	T	E	E	T
North Dakota	E*	E*	T	T

	Generally	By Prescription	Oxygen Equipment and Supplies	Physical/Occupational Therapy Equipment
Ohio	T	E*	E	T
Oklahoma	T	T	T	T
Pennsylvania	E	E	E	E
Rhode Island	E*	E*	E*	T
South Carolina	T*	E*	T	T
South Dakota	E*	E	E*	E*
Tennessee	T	E*	E	T
Texas	E*	E*	E*	E*
Utah	T	E	E*	T
Vermont	E*	E*	E	E*
VIRGINIA	E*	E*	E	E*
Washington	T	E*	T	T
West Virginia	T	E*	E*	T
Wisconsin	E*	E*	E*	T
Wyoming	T	E*	E*	T

KEY:
E = Exempt
T = Taxable

NOTES:

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

Arizona	* - Medical oxygen, including delivery hoses, masks, tents, regulators and tanks, when dispensed on a physician's prescription.
Arkansas	* - Oxygen for human use, mobility enhancing equipment, and disposable medical supplies are exempt from tax if prescribed by a physician.
California	* - Wheelchairs, crutches, canes, walkers, insulin, syringes, and diabetic supplies in accordance with a physician's instructions are exempt.
Colorado	* - Insulin, syringes, glucose for insulin reactions, and supplies furnished as part of a doctor's professional services are exempt. ** -Therapeutic devices, appliances, or related accessories used to correct or treat a human physical disability or surgically created abnormality are exempt. Therapeutic devices and accessories with a total retail value of over \$100 must be accompanied by a written recommendation from a licensed doctor to be exempt.
Connecticut	* - Crutches, walkers, wheelchairs are exempt along with insulin and syringes when prescribed or the initial dosage was determined by a person authorized to issue prescriptions.
D.C.	* - Crutches, walkers, wheelchairs, oxygen tents, kits and inhalers for the personal use of the purchaser under a written prescription or order are exempt.
Florida	* - Canes and other specific medical supplies are exempt along with prescribed medical supplies and products.
Georgia	* - Blood measuring devices, other monitoring equipment, or insulin delivery systems when used exclusively by diabetics are exempt along with oxygen prescribed by a licensed physician, and wheelchairs and accompanying equipment sold to permanently disabled persons.
Idaho	* - Exempt if prescribed; otherwise, taxable.
Illinois	* - Taxed at a reduced rate; exempt if purchaser is receiving medical assistance and resides in a licensed long-term care facility.
Indiana	* - Devices used to administer insulin, equipment and devices used to monitor blood, and other specified medical supplies and devices are exempt, along with prescribed mobility enhancing equipment.
Iowa	* - Mobility enhancing equipment is exempt if prescribed.
Kansas	* - Mobility enhancing equipment and oxygen delivery equipment are exempt if prescribed.
Kentucky	* - Insulin and diabetic supplies for use by diabetics and other specified supplies are exempt along with prescribed mobility enhancing equipment.
Maine	* - Diabetic supplies, crutches, canes, walkers, wheelchairs, and other specified equipment are exempt.
Massachusetts	* - Specified items are exempt along with oxygen equipment when prescribed.
Michigan	* - Mobility enhancing equipment is exempt if prescribed along with oxygen equipment for home use if prescribed.
Minnesota	* - Specified items, including oxygen equipment for home use.
Nebraska	* - Oxygen equipment is exempt if prescribed.
New Jersey	* - Reusable medical and surgical equipment for home use is exempt along with prescribed mobility enhancing equipment.

North Dakota	* - Mobility enhancing equipment or supplies for ostomy care or bladder dysfunction are exempt, along with insulin, syringes, blood testing kits and other diabetic supplies.
Ohio	* - Mobility enhancing equipment is exempt if prescribed.
Rhode Island	* - Oxygen delivery equipment for home use and durable medical equipment for home use is exempt, along with mobility enhancing equipment.
South Carolina	* - Diabetic supplies sold under the authorization of a physician are exempt, along with disposable medical supplies, if prescribed.
South Dakota	* - Ostomy care supplies are exempt along with medical devices, oxygen equipment, and mobility enhancing equipment, if prescribed.
Tennessee	* - Disposable medical supplies for use with prescription drugs and mobility enhancing equipment are exempt if prescribed.
Texas	* - Syringes, ostomy supplies, and other specified items are exempt, along with prescribed therapeutic appliances and devices.
Utah	* - Oxygen equipment is exempt if prescribed.
Vermont	* -Supplies used in treatment and other specified items are exempt.
Virginia	* - Exempts wheelchairs, braces, crutches and other durable medical equipment; insulin, insulin syringes, and devices and chemical reagents used by diabetics; and certain other equipment.
Washington	* - Disposable medical supplies for use with prescription drugs are exempt if prescribed.
West Virginia	* - Mobility-enhancing equipment and oxygen delivery equipment are exempt if prescribed.
Wisconsin	* - Mobility-enhancing equipment, oxygen delivery equipment, and other specified items for home use are exempt.
Wyoming	* - Devices to administer insulin, oxygen delivery equipment, mobility enhancing equipment and assistive devices for permanently disabled individuals are exempt if prescribed.

**APPENDIX 2
PROSTHETIC DEVICES AND ORTHOPEDIC APPLIANCES**

	Specific Definition	Prosthetic Devices	Required to be by or on behalf of patient	Require prescription or administer by medical practitioner	Orthopedic appliances	Repair & Replacement Parts for Prosthetics	Repair & Replacement Parts for ODs
Alabama	N/N	T	N/A	N/A	T	N/A	N/A
Arizona	Y/N	E	N	Y	T	E	N/A
Arkansas	Y/N	E	Y	Y	T	T	T
California	N/N	E	N	*	E*	E	E
Colorado	Y/N	E	N	N	T	T	T
Connecticut	N/N	E	N/A	N/A	T	E	T
District of Columbia	N/N	E*	Y	Y	E**	T	T
Florida	N/N	E	N	*	E	E	E
Georgia	Y/N	E	N	Y	T	T	T
Hawaii	N/N	T	N/A	N/A	T	T	T
Idaho	Y/N	E	N	Y	E	E	E
Illinois	N/N	T*	N	N	T*	T	T
Indiana	Y/N	E	N	Y	E	T	T
Iowa	Y/N	E	N	N	E	T	T
Kansas	Y/N	E	N	Y	E	T	T
Kentucky	Y/N	E	N	N	T	T	T
Louisiana	Y/N	E	N	Y	E	T	T
Maine	Y/N	E	Y	N	T	T	T
Maryland	N/N	T	N/A	N/A	E*	T	T
Massachusetts	N/N	T*	N	N	T*	T	T
Michigan	Y/N	E	N	E	T	T	T
Minnesota	Y/N	E	N	N	E	E	E
Mississippi	N	T	N/A	N/A	T	T	T
Missouri	Y	E	N	N	E	T	T
Nebraska	Y/N	E	N	N	T	T	T

	Specific Definition	Prosthetic Devices	Required to be by or on behalf of patient	Require prescription or administer by medical practitioner	Orthopedic appliances	Repair & Replacement Parts for Prosthetics	Repair & Replacement Parts for ODs
Nevada	Y/N	E	N	Y	T	T	T
New Jersey	Y/N	E	N	N	E	E	E
New Mexico	N/N	T	N/A	N/A	T	T	T
New York	N/N	E	N	N	T	E*	T
North Carolina	Y/N	E	N	N	E*	T	T
North Dakota	Y/N	E	N	N	T	T	T
Ohio	Y/N	E	Y	N	T	T	T
Oklahoma	Y/N	T*	Y	T*	T	T	T
Pennsylvania	N/N	T*	Y	N	T	T	T
Rhode Island	Y/N	E	N	Y	T	T	T
South Carolina	Y/N	E	N	Y	T	T	T
South Dakota	Y/N	E	N	Y	T	T	T
Tennessee	Y/N	E	N	N	T	E	T
Texas	Y/Y	E	N	N	E	E	E
Utah	Y/N	E	N	Y*	T	E	T
Vermont	Y/N	E	N	N	T	T	T
VIRGINIA	Y/N	E	Y	N	E	E	E
Washington	Y/N	E	N	Y	T	E	T
West Virginia	Y/N	E	N	Y	T	T	T
Wisconsin	Y/N	E	N	N	T	E	T
Wyoming	Y/N	E	N	Y	T	E	T

KEY:
E = Exempt
T = Taxable

NOTES:

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

California	* - In order to qualify for exemption, the item must satisfy one of a specified list of conditions, including, but not limited to: being issued under a prescription, being furnished by a licensed medical practitioner, or being sold to a licensed medical practitioner.
District of Columbia	* - Exempts list of specified prosthetic devices and medical surgical supplies and equipment, if bought for personal use. **- Exempt only if designed to be worn on user.
Florida	* - Exempt if pursuant to a prescription or if the item falls under a specified list of exempt prosthetic and orthopedic devices set forth in the regulation.
Illinois	* - Taxable at a reduced rate of 1%.
Maryland	* - Exempt if prescribed by a physician and designed to be worn on the person of the user.
Massachusetts	* - Provides a specific list of exempt items.
New York	* - Replacement parts exempt if identifiable at the time of sale.
North Carolina	* - Most of the items that were formerly exempt orthopedic appliances continue to be exempt as prosthetic devices.
Oklahoma	* - Exempt when administered or distributed by a legally authorized practitioner or when purchased or leased by user under a prescription or work order of a practitioner and when the cost of such items are reimbursable under Medicare or Medicaid.
Pennsylvania	* - Exempt if designed for a particular individual.
Utah	* - Exempt if pursuant to a prescription or purchased by a hospital or other medical facility.

**APPENDIX 3
DURABLE MEDICAL EQUIPMENT AND SUPPLIES**

	Specific Definition	Generally	Required to be by or on behalf of patient	Repair & Replacement Parts	P&S Generally	P&S Related	P&S Specifically designed
Alabama	Y	E*	N	T	T	T	T
Arizona	Y*	T	N	T	T	T	T
Arkansas	Y*	E**	Y	E	T	E	T
California	N	T	N	T	T	T	T
Colorado	N	T	N	T	T	T	T
Connecticut	N	T	N	T	T	E	T
District of Columbia	N	T	Y	T	T	T	T
Florida	N	T	N	T	T	T	T
Georgia	Y	E*	N	T	T	T	T
Hawaii	N	T	N/A	T	T	T	T
Idaho	Y	E	N	E	T	E	E
Illinois	N	T*	N	T	T	T	T
Indiana	Y*	E**	N	E	E	E	E
Iowa	Y*	E**	N	E	T	E	E
Kansas	Y*	T**	N	E	T	T	T
Kentucky	Y*	E**	N	E	T	E	E
Louisiana	N	T*	Y	T	T	T	T
Maine	N	T*	Y	T	T	T	T
Maryland	Y	E*	N	T	T	T	T
Massachusetts	N	T	N/A	N/A	N/A	N/A	N/A
Michigan	Y*	E	N	E	T	T	T
Minnesota	Y*	E*	N	E	T	T	T
Mississippi	N	T	N	T	T	T	T
Missouri	N	T	N	T	T	T	T
Nebraska	Y*	E	N	E	E	E	E
Nevada	Y*	T**	N	E	T	T	T
New Jersey	Y*	E	N	T	T	T	T

	Specific Definition	Generally	Required to be by or on behalf of patient	Repair & Replacement Parts	P&S Generally	P&S Related	P&S Specifically designed
New Mexico	N	T	N/A	T	T	T	T
New York	N	E*	N	E	T	E	E
North Carolina	Y*	E**	N	T	T	E***	E***
North Dakota	Y*	E	N	E	T	T	T
Ohio	Y*	E**	N	E	T	T	T
Oklahoma	Y*	T	N	E	T	T	T
Pennsylvania	N	E*	N	T	T	T	T
Rhode Island	Y*	E	N	T	T	T	T
South Carolina	N	T	N	T	T	T	T
South Dakota	Y*	E**	N	E	E	E	E
Tennessee	Y*	E**	N	E	T	T	T
Texas	N	T	N/A	T	T	T	T
Utah	Y*	E**	N	E	T	T	T
Vermont	Y*	E	N	T	T	T	T
VIRGINIA	Y	E	Y	T	T	T	E
Washington	Y*	T	N	T	T	T	T
West Virginia	Y*	E**	N	E	T	T	T
Wisconsin	Y*	E**	N	E	T	E	E
Wyoming	Y*	E**	N	E	T	T	T

KEY:

E = Exempt

T = Taxable

NOTES:

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

Alabama	* - Must be sold to Medicaid recipients and billed directly to and paid for by Medicaid
Arizona	* - Must have a federal health care financing administration common procedure code, be eligible for Medicare reimbursement; be prescribed, and 4 Virginia criteria.
Arkansas	*- Four Virginia requirements plus cannot be worn on the body. **-Must be prescribed by a physician.
Georgia	* - Exempt if pursuant to a prescription.
Illinois	* - Taxable at a reduced rate of 1%.
Indiana	* - Three VA requirements plus is not worn in or on the body. **- Exempt if the sales are prescribed by a person licensed to issue the prescription.
Iowa	* - Is not worn in or on the body; is for home use only; is prescribed by a practitioner. **-Exempt if intended for human use or consumption.
Kansas	* - Definition adds, is not worn in or on the body. No home use requirement. * - Taxable unless purchased w/a prescription paid for by Medicare or Medicaid, or purchased directly by a nonprofit skilled nursing home.
Kentucky	* - Definition adds, is not worn in or on the body. No home use requirement. **-Exempt if prescription is issued.
Louisiana	* - Exemption for medical devices used in the medical treatment of various diseases or administered exclusively to the patient by a health care professional.
Maine	* - Exemption for artificial devices if designed, constructed, or altered for the use of a particular individual to correct or alleviate physical incapacity.
Michigan	* - Definition adds, is not worn in or on the body.
Minnesota	* - Definition adds, is not worn in or on the body.
Nebraska	* - Same as 4 Virginia criteria.
Nevada	* - Definition adds, is not worn in or on the body. **- Only if exempt if paid for or reimbursed by Medicare or Medicaid.
New York	* - Medical equipment and supplies exempt if primarily and customarily used for medical purposes and not for general use. Broader exemption than just DME.
North Carolina	* - Definition adds, is not worn in or on the body. No home use requirement. **- Exempt if sold on a prescription. ***Must be eligible to be covered under the Medicare or Medicaid program.
North Dakota	* - Definition adds, is not worn in or on the body.
Ohio	* - Definition adds, is not worn in or on the body. **- Exempt when ordered by prescription.
Oklahoma	* - Definition adds, is not worn in or on the body.
Pennsylvania	* - Exemption for medical supplies that is broader than VA's DME exemption.
Rhode Island	* - Definition adds, is not worn in or on the body.
South Dakota	* - Definition adds, is not worn in or on the body. No home use requirement. **-Exempt if prescribed by a prescription, physician, chiropractor, optometrist, dentist, podiatrist, or audiologist.

Tennessee	* - Definition adds, is not worn in or on the body. ** - Exempt if dispensed pursuant to a prescription for human use.
Utah	* - Definition adds, is not worn in or on the body. ** - Exempt if purchaser presents a prescription.
Vermont	* - Definition adds, is not worn in or on the body. No home use requirement.
Washington	* - Definition adds, is not worn in or on the body.
West Virginia	* - Definition adds, is not worn in or on the body. **-Exempt if purchased on a prescription of person licensed to prescribe drugs in the state.
Wisconsin	* - Definition adds, is not worn in or on the body. **- Exempt when purchased for use by a human being in a person's home.
Wyoming	* - Definition adds, is not worn in or on the body. No home use requirement. **- Exempt if sold under a prescription.

**APPENDIX 4
MEDICAL EQUIPMENT FOR PERSONS WITH DISABILITIES**

	Typewriters or Computers	Motor Vehicle Equipment	Wheelchair lifts
Alabama	T	T	T
Arizona	E*	T	T
Arkansas	T	E*	E plus hand controls.
California	T	E	-
Colorado	T	T	T
Connecticut	T	E	-
District of Columbia	T	T	T
Florida	T	T	T
Georgia	T	T	T
Hawaii	T	T	E
Idaho	T	T	T
Illinois	T*	T**	T
Indiana	T	T	E*
Iowa	T	T	T
Kansas	T	T	E
Kentucky	T	T	E*
Louisiana	T	T	E*
Maine	T	T	T
Maryland	T	E	T
Massachusetts	T	T	E*
Michigan	T	E*	-
Minnesota	T	E	-
Mississippi	T	T	T
Missouri	E*	E	-
Nebraska	T	E*	-
Nevada	T	T	T
New Jersey	T	E	E
New Mexico	T	T	T
New York	T*	E	-
North Carolina	T	T	T

	Typewriters or Computers	Motor Vehicle Equipment	Wheelchair lifts
North Dakota	T	E	-
Ohio	T	E*	-
Oklahoma	T	T	T
Pennsylvania	T	T	E
Rhode Island	T	E	-
South Carolina	T	T	T
South Dakota	T	T	E*
Tennessee	T	E*	-
Texas	E*	T**	T
Utah	T	T	T
Vermont	T	T**	T
VIRGINIA	E	E	E
Washington	T	T	T
West Virginia	T	T	T
Wisconsin	T	T	T
Wyoming	E*	E**	E

KEY:
E = Exempt
T = Taxable

NOTES:

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

Arizona	* - Exempts machinery, equipment, and technology that enable disabled persons to become more independent, including powered communication systems.-
Arkansas	* - Automobile hand controls and wheelchair lifts exempt if: 1) prescribed; 2) purchased in conjunction w/motor vehicle; and 3) the gross receipts derived from sale are separately stated on the invoice for the purchase of the motor vehicle.
Illinois	* - Communicators used to assist those in communicating w/persons suffering from hearing loss taxable at reduced rate. ** - Taxable at a reduced rate of 1%.
Indiana	* - Exempt if issued under a prescription.
Kentucky	* - Exempt if issued under a prescription.
Louisiana	* - Exempt if issued under a prescription.
Michigan	* - Exempt if used by the disabled to lead a reasonably normal life.
Missouri	* - Electronic alternative and augmentative communication devices exempt if purchased by or on behalf of a person w/one or more physical or mental disabilities to enable them to function more independently. No prescription required.
Nebraska	* -Exempt if purchased under a prescription issued by a Nebraska-licensed physician.
New York	* - Exemption for equipment used by hearing impaired to communicate by telephone.
Ohio	* - Exempt if issued under a prescription.
South Dakota	* - Exempt if issued under a prescription.
Tennessee	* - Exemption for controls and wheelchair lifts installed on motor vehicles pursuant to a prescription for human use.
Texas	* - Exemption for adaptive devices or software for computers used by people who are hearing impaired, purchased on prescription from a licensed practitioner of the healing arts. ** - Sale of a motor vehicle that is modified for operation by orthopedically handicapped person is exempt.
Vermont	* - Exempts motor vehicles leased or owned and operated by a permanently physically handicapped person who drives by means of altered vehicle controls.
Wyoming	* - Exemption for computers that aid in speech. ** Exemption for pedal extension for vehicles.

ATTACHMENTS

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.

As mandated by the Virginia General Assembly, the Department of Taxation ("TAX") is conducting a study of the fiscal impact of the Retail Sales and Use Tax exemptions authorized by subdivisions 10 and 13 of *Va. Code* § 58.1-609.10, which exempt the following:

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.

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.

Pursuant to *Va. Code* § 58.1-601(b), we respectfully request that you complete, to the best of your ability, the attached questionnaire.

Your response will only be used for purposes of this study, and will be considered confidential taxpayer information. Pursuant to *Va. Code* § 58.1-3, responses will be aggregated and no information will be released with respect to individual responses. The data you provide will be used for revenue estimating purposes only and will not be made available to auditors.

If you have any questions, please contact:

Joshua Silverman
Phone: (804) 371-5708
Fax: (804) 371-2355
Joshua.Silverman@tax.virginia.gov

Please return the survey form in the enclosed envelope or via fax by June 21, 2010 to:

Joshua Silverman
Virginia Department of Taxation
Post Office Box 27185
Richmond, Virginia 23261-7185

If you prefer to answer electronically, you can find the survey on TAX's website under the Publications page (<http://www.tax.virginia.gov/site.cfm?alias=Surveys>). Click on "Surveys Currently Being Conducted," download and complete the form and email it to the address above.

1. Please provide the **name of the supplier and the name, title, address, phone number, and FAX number** of the person completing this survey.

2. For the last five (5) calendar or fiscal years (or the last five years available), please provide the total dollar amount of **durable medical equipment sold exempt of Retail Sales and Use Tax in Virginia**. Do not include hearing aids, eyeglasses or contact lenses among the equipment sold. These items are covered under another exemption. Some examples of durable medical equipment include wheelchairs, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, insulin, and insulin syringes. If exact figures are not available, then please provide an estimated amount.

Please check one: __Calendar Year __Fiscal Year	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
All Durable Medical Equipment					

3. For the last five (5) calendar or fiscal years (or the last five years available), please provide the total dollar amount of the **communication equipment for use by handicapped persons sold exempt of Retail Sales and Use Tax in Virginia**. This is a subset of durable medical equipment. If exact figures are not available, then provide an estimated amount. Examples include typewriters, computers, voice prosthetics, and personal optical scanners.

Please check one: __Calendar Year __Fiscal Year	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Communication Equipment for Handicapped Persons					

As mandated by the Virginia General Assembly, the Department of Taxation ("TAX") is conducting a study of the fiscal impact of the Retail Sales and Use Tax exemptions authorized by subdivision 12 of *Va. Code* § 58.1-609.10, which exempts the following:

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

Pursuant to *Va. Code* § 58.1-601(b), we respectfully request that you complete, to the best of your ability, the attached questionnaire.

Your response will only be used for purposes of this study, and will be considered confidential taxpayer information. Pursuant to *Va. Code* § 58.1-3, responses will be aggregated and no information will be released with respect to individual responses. The data you provide will be used for revenue estimating purposes only and will not be made available to auditors.

If you have any questions, please contact:

Joshua Silverman
Phone: (804) 371-5708
Fax: (804) 371-2355
Joshua.Silverman@tax.virginia.gov

Please return the survey form in the enclosed envelope or via fax by June 25, 2010 to:

Joshua Silverman
Virginia Department of Taxation
Post Office Box 27185
Richmond, Virginia 23261-7185

If you prefer to answer electronically, you can find the survey on TAX's website under the Publications page (<http://www.tax.virginia.gov/site.cfm?alias=Surveys>). Click on "Surveys Currently Being Conducted," download and complete the form and email it to the address above.

1. Please provide the **name of the supplier and the name, title, address, phone number, and FAX number** of the person completing this survey.

2. For the last five (5) calendar or fiscal years (or the last five years available), please provide the total dollar amount of **motor vehicle equipment for handicapped persons sold exempt of Retail Sales and Use Tax in Virginia. Some examples of motor vehicle equipment for handicapped persons include hand controls, steering devices, left foot accelerators, pedal extensions, electronic gas and brake pedals, reduced and zero effort steering wheels, horizontal steering, digital steering, joystick control, and lower extremity steering.** If exact figures are not available, then please provide an estimated amount.

Please check one: __Calendar Year __Fiscal Year	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Motor Vehicle Equipment for Handicapped Persons					