COMMONWEALTH of VIRGINIA

Department of Taxation

January 10, 2018

To: The Honorable Terence R. McAuliffe
Governor of Virginia

The Honorable Emmett W. Hanger, Jr.
Co-Chairman, Senate Finance Committee

The Honorable S. Chris Jones
Chairman, House Appropriations Committee

Attached is the Report of the 2017 Accelerated Sales Tax Workgroup. This report was mandated by Item 274(D) of the 2017 Appropriation Act (2017 *Acts of Assembly*, Chapter 836). Please let me know if you have any further questions.

Sincerely,

Craig M. Burns
Tax Commissioner

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

Attachment

Report of the 2017 Accelerated Sales Tax Workgroup

Department of Taxation

January 2018

Table of Contents

Report of the 2017
Accelerated Sales Tax Workgroup

The Accelerated Sales Tax (AST) Workgroup was established by Item 274(D) of House Bill 1500 (2017 *Acts of Assembly*, Chapter 836), the 2017 Appropriation Act. See Appendix A. The workgroup was asked to consider alternatives and limitations to the current accelerated sales tax mandate and examine other sales tax-related issues as it deemed appropriate.

The workgroup met on October 12, 2017. The Department of Taxation ("the Department") presented information about the current AST structure as well as past AST programs in Virginia and the approaches that other states have taken with accelerated sales tax schedules. See Appendix B. Following the presentation, there was a period of discussion among the group about AST related topics. See Appendices C and D for minutes from the workgroup meeting and the list of attendees.

Sales Tax Background

Retail sales and use tax is imposed on all sales of tangible personal property and selected services unless an exemption applies. The tax rate is 5.3 percent statewide with the exception of Northern Virginia and Hampton Roads localities, where the rate is 6 percent. Sales tax returns must be filed by the 20th of the month following the month the tax was collected. All sums collected by a dealer are held in trust for the Commonwealth. Va. Code 58.1-625(F).

Current AST Program

The AST rules mandate that sales tax collected in June of the current year be remitted by the end of June rather than by July 20 as would be required under the usual sales tax filing schedule. The program, therefore, deposits sales tax revenues into the current fiscal year which would otherwise be received and recognized in the next fiscal year. This allows the revenues to be available for appropriation in the current fiscal year.

The current AST program was implemented in 2010. Under AST, dealers with annual sales over the statutory threshold must make a payment for June sales tax that is equal to 90 percent of their liability for the previous June. This payment must be made on or before the 30th day of June, if by electronic fund transfer; otherwise it is due on or before the 25th day of June. Dealers are then entitled to a credit equal to the AST remittance on their June sales tax return filed in July. The AST threshold amount is set by statute and determines the number of dealers that are affected and the amount of revenue that is accelerated. See the chart on Page 2.

Year	Threshold	Number of AST Bills	Number of AST Payments	Total Revenue Accelerated
2010	$1 million	12,206	10,667	$279,340,862
2011	$5.4 million	2,935	2,837	$242,867,249
2012	$26 million	613	601	$193,885,235
2013	$26 million	672	664	$199,573,732
2014	$48.5 million	332	332	$175,287,579
2015	$2.5 million	6,474	5,992	$337,427,092
2016	$2.5 million	6,779	6,401	$361,362,398
2017	$2.5 million	7,079	6,649	$370,350,743

The Department may waive the AST requirement or allow dealers to pay a lesser amount upon a finding that the accelerated payment requirement would cause an undue hardship. Circumstances that might lead to such a waiver include the sale or closing of a significant part of a business, or substantial decline in sales since the previous June.

Revenue Analysis

The chart below shows the relationship between the AST threshold values, the General Fund revenue impact, and the number of dealers affected if the threshold were adjusted for the 2018 AST payment.

Threshold (Annual Sales)	Fiscal Year 2018 General Fund Revenue	Total Dealers
$4,000,000 or More	$199,700,000	3,062
$5,000,000 or More	$193,100,000	2,453
$6,000,000 or More	$187,800,000	2,066
$7,000,000 or More	$183,400,000	1,794
$8,000,000 or More	$179,300,000	1,592
$9,000,000 or More	$175,700,000	1,426
$10 Million or More	$172,400,000	1,281
$20 Million or More	$150,200,000	650
$30 Million or More	$135,000,000	416
$40 Million or More	$125,200,000	298
$50 Million or More	$117,500,000	227
$60 Million or More	$117,400,000	226
$70 Million or More	$117,300,000	225
$80 Million or More	$102,400,000	133
$90 Million or More	$100,500,000	123
$100 Million or More	$98,000,000	112
$500 Million or More	$57,500,000	19
$1 Billion or More	$44,600,000	9

Accelerated Sales Tax in Other States

Several states have accelerated sales tax or prepayment schedules. The chart below is a representative sample of different approaches taken by states that have programs similar to Virginia's AST.

State	Due Date	Annual Sales Threshold	Accelerated Payments
Arkansas	Semi-Monthly	$2.4 million	Dealers must remit 80% of the tax for the current month by the 24th of the month
California	Semi-Monthly	$0.2 million	In 8 different months, dealers must remit 90% of the tax for the current month by the 24th of the month
Florida	Semi-Monthly	$3.0 million	Dealers must remit 60% of the tax for the current month by the 20th of the month
Iowa	Semi-Monthly	$0.9 million	Dealers must remit tax for the first 15 days of the month by the 25th of the month
Michigan	Semi-Monthly	$12 million	Dealers must make a prepayment equal to 75% of the previous month's liability by the 20th of the month
Minnesota	June 28th	$3.4 million	Dealers must make an accelerated payment equal to 81.4% of May, June, or average monthly liability by June 28
West Virginia	June 20th	$19 million	Dealers must remit tax for the first half of June by June 20

Input from the Business Community

Subsequent to the Department's presentation, there was an open discussion among business organizations, Department representatives, and legislative staff. Much of the dialogue was focused on AST threshold limits. One particular area of concern is the ability of dealers to comply with AST rules when the parameters of the program may change from year to year. Business representatives also expressed a desire to understand how revenue from AST is used and why it is needed.

Businesses expressed a desire for more advanced notice of upcoming AST payments and rules so they can adjust the timing of their filings. It should also be noted, however, that the process of finalizing the state budget puts constraints on the amount of time that the Department has to give notice to affected dealers.

The waiver process was also discussed. Representatives from business organizations requested that dealers be given more information about the waiver process and that there be a more liberal granting of waivers.

Issues regarding penalties for late payment were raised. Dealers would like to see the penalty reduced or eliminated. It was noted that penalties can be a particular burden on small businesses.

Finally, the working group discussed possible alternatives to the current AST structure. One such alternative is changing the current monthly sales tax filing to a semi-monthly filing. Semi-monthly filing would require dealers whose annual sales are over the threshold to file sales tax twice a month. Although sales taxes collected are held in trust for the Commonwealth, there was concern that such a dramatic change in filing procedures would be a burden on dealers.

Following the meeting, formal public comments were submitted to the Department by interested parties. See Appendices E-G.

Appendix A

VIRGINIA STATE BUDGET

2017 Session

Budget Bill - HB1500 (Chapter 836)

Bill Order » Office of Finance » Item 274

Department of Taxation

Item 274

D. The Department of Taxation shall convene a workgroup to examine the provisions related to the timing of payments and return filings required of registered dealers pursuant to §§ 58.1-615 and 58.1-616, Code of Virginia, and § 3-5.06 of this act. The workgroup shall include the staffs of the House Appropriations and Senate Finance Committees, the Secretary of Finance or his designee, and representatives from affected businesses and industries. Additional staff support shall be provided by the Department of Taxation and the Division of Legislative Services upon request. The workgroup shall consider alternatives and limitations to the current accelerated sales tax requirement and may examine other sales tax-related issues as it deems appropriate. The workgroup shall complete its meetings by November 30, 2017, and shall submit to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees a report of its findings and recommendations no later than the first day of the 2018 Regular Session of the General Assembly.

Appendix B:
Presentation by the Department of Taxation to the AST Workgroup

AST Workgroup

October 12, 2017

Virginia Tax

Meeting Agenda

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- Introductions
- Workgroup Mandate
- Retail Sales and Use Tax Background
- Accelerated Sales Tax Requirement
- History of AST
- Revenue Impact
- Current AST Process
- AST Requirements in Other States
- Discussion and Public Comment

Virginia Tax

Department of Taxation Contacts

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- Craig Burns, Tax Commissioner
- Bill White, Assistant Commissioner
- Kristin Collins, Policy Development Director
- Joe Mayer, Lead Tax Policy Analyst
- Stephen Klos, Tax Policy Analyst
- Stuart Carter, Chief Economist
- Aisha Yededji, Lead Economist
- Barbara Toellner, Collections Manager

Virginia Tax

Workgroup Mandate

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- **Mandate:**
  - Item 274D of House Bill 1500 (2017 Acts of Assembly, Chapter 836).
  - Department of Taxation to convene a workgroup to examine the provisions related to the timing of payments and return filings required of dealers under the sales tax code and the accelerated sales tax schedule.
  - Workgroup will consider alternatives and limitations to the current accelerated sales tax requirement and may examine other sales tax-related issues as it deems appropriate.
  - Workgroup will complete its meetings by November 30, 2017.
  - Workgroup will submit a report of its findings and recommendations no later than the first day of the 2018 Regular Session of the General Assembly.

Virginia Tax

Retail Sales and Use Tax Background

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- **Background:**
  - Retail Sales and Use Tax is imposed on:
    - All sales of tangible personal property unless an exemption applies.
    - Selected services.
  - Tax rate:
    - 5.3% statewide.
    - 6.0% in Northern Virginia and Hampton Roads localities.
  - Total state and local tax collections in FY 2016 were $6.1 billion.
  - Tax is generally collected by registered dealers.
  - All sums collected by a dealer are held in trust for the Commonwealth.

Virginia Tax

Retail Sales and Use Tax Background

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- **Dealer Filing Requirements:**
  - Generally, by the 20th day of the month, dealers are required to:
    - File return reporting previous month's sales.
    - Remit tax on previous month's sales.
  - Returns and payments must be made using an electronic medium.
  - Tax Commissioner authorized to waive the requirement to file by electronic means in situations where it would cause an undue hardship.

Virginia Tax

Accelerated Sales Tax Background 7

- **What is Accelerated Sales Tax?**
  - Affected dealers are required to make an AST payment equal to 90 percent of the dealer's liability for the previous June on or before June 30th, if by electronic fund transfer, otherwise on or before the 25th day of June.
  - AST pulls sales tax revenues into the current fiscal year which would otherwise be received and recognized in the next fiscal year. This allows the revenues to be available for appropriation in the current fiscal year.
  - Appropriations Act sets forth the minimum sales level, or threshold, for dealers to be required to make the AST payment, so that the necessary revenues are accelerated.

Virginia Tax

Accelerated Sales Tax Background 8

- **Mechanics of AST:**
  - Affected dealers are notified by the Department of Taxation in advance.
  - If a dealer does not receive a mailing and believes that he is liable to make the AST payment, he should contact the Department for assistance.
  - Department sends each dealer a bill equal to 90 percent of the dealer's liability for the previous June.
  - Dealer must remit payment on or before the 30th day of June, if by electronic fund transfer, otherwise on or before the 25th day of June.
  - Dealers were entitled to a credit for the payment on their next month's return.

Virginia Tax

Revenue Impact of AST

Year	Threshold	Number of AST Bills	Number of AST Payments	Total Amount Received
2010	$1 million	12,206	10,667	$279,340,862
2011	$5.4 million	2,935	2,837	$242,867,249
2012	$26 million	613	601	$193,885,235
2013	$26 million	672	664	$199,573,732
2014	$48.5 million	332	332	$175,287,579
2015	$2.5 million	6,474	5,992	$337,427,092
2016	$2.5 million	6,779	6,401	$361,362,398
2017	$2.5 million	7,079	6,649	$370,350,743

Accelerated Sales Tax History

- **Timeline**:
  - 1977: Monthly Estimated Payments:
    - Legislation required monthly estimated sales and use tax payments.
    - Attorney General Opinion 01121978 advised that the accelerated payment schedule was constitutionally valid.
    - Repealed in 1978 (before it went into effect).
  - 2002 – 2007 First Accelerated Sales Tax Program (eliminated in 2007).
  - 2009 Semi-Monthly Sales Tax Filing (repealed before it went into effect).
  - 2010 – 2017 Second Accelerated Sales Tax Program

Accelerated Sales Tax History

- **First AST Program (2002-2006):**

Payment in June of	Threshold	Payment Amount
2002	$1.3 million	90% of previous June
2003	$1.3 million	90% of previous June
2004	$1.3 million	90% of previous June
2005	$1.3 million	90% of previous June
2006	$50 million	20% of previous June
2007	AST Eliminated	None

Accelerated Sales Tax History

- **Semi-Monthly Filing Requirement:**
  - In 2009, the General Assembly enacted a budget for the 2008-2010 Biennium that required dealers with annual sales of $12 million or greater in the preceding calendar year to file and remit sales tax twice a month (semi-monthly)
    - Effective beginning in June 2010
    - The first return was due by the 20th day of the month for sales made in the first fifteen days of the same month
    - The second return was due on or before the 20th day of the following month for the remaining days in the prior month
  - Semi-monthly requirement repealed before it took effect

Accelerated Sales Tax History

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- **Current AST Program (2010-Present):**
  - In 2010, the General Assembly reinstated an AST payment requirement.
  - AST payment is equal to 90% of the dealer's liability for the previous June
  - Must be made on or before the 30th day of June, if by electronic fund transfer; otherwise due on or before the 25th day of June.
  - Dealers are entitled to a credit for the payment on their next month's return

Virginia Tax

Revenue Impact

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Year	Threshold	Number of AST Bills	Number of AST Payments	Total Amount Received
2010	$1 million	12,206	10,667	$279,340,862
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Virginia Tax

Current Accelerated Sales Tax Process 15

- **Timing of 2017 AST:**
  - May 1 - 1st Notification mailers sent.
  - May 3 - Guidelines issued.
  - May 26 - 2nd Notification mailers sent.
  - June 20 - May returns due.
  - June 26 - AST Mailed payments due.
  - June 30 - AST EFT payments due.
  - July 20 - June return due with balance of tax payment if underpaid.
  - 2 rounds of courtesy reminder calls are made to the top 200 dealers.
    - One round in the beginning of June- asking if they received the letter.
    - 2nd round of calls made the last week of June.

Virginia Tax

Current Accelerated Sales Tax Process 16

- **Waivers:**
  - Department may waive AST requirement or allow dealers to pay a lesser amount upon a finding that the accelerated payment requirement would cause an undue hardship:
    - Sale or closing of a significant part of business.
    - Substantial decline in sales since the previous June.
    - Extenuating circumstances, such as a major change in the dealer's business model.
    - Out-of-state dealer who no longer makes sales in Virginia.
    - Dealer is primarily liable for AST because of a one-time extraordinary event in the previous fiscal year.

Virginia Tax

Current Accelerated Sales Tax Process

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- **Waivers**:
  - Process to obtain:
    - Request in writing a waiver from the Tax Commissioner.
    - Demonstrate the nature of the hardship with documentation and financial records.
    - Submit application for waivers no later than June 8.

Virginia Tax

AST Waivers

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Year	Threshold	Number of Requests	Granted	Denied	Partial Waiver	Total Amount Changed
2010	$1 million	108	42	17	49	$3,480,170
2011	$5.4 million	15	8	1	6	$2,525,676
2012	$26 million	4	2	0	2	$1,301,989
2013	$26 million	3	2	0	1	$1,227,859
2014	$48.5 million	0	0	0	0	$0
2015	$2.5 million	31	17	1	13	$6,909,426
2016	$2.5 million	14	12	0	2	$482,891
2017	$2.5 million	29	23	1	5	$1,905,320

Virginia Tax

Accelerated Sales Tax Payments in Other States

State	Due Date	Annual Sales Threshold	Accelerated Payments
Arkansas	Semi-Monthly	$2.4 million	Dealers must remit 80% of the tax for the current month by the 24th of the month
California	Semi-Monthly	$0.2 million	In 8 different months, Dealers must remit 90% of the tax for the current month by the 24th of the month
Florida	Semi-Monthly	$3.0 million	Dealers must remit 60% of the tax for the current month by the 20th of the month
Iowa	Semi-Monthly	$0.9 million	Dealers must remit tax for the first 15 days of the month by the 25th of the month
Michigan	Semi-Monthly	$12 million	Dealers must make a prepayment equal to 75 percent of the previous month's liability by the 20th of the month
Minnesota	June 28th	$3.4 million	Dealers must make an accelerated payment equal to 81.4% of May, June, or average monthly liability by June 28
West Virginia	June 20th	$19 million	Dealers must remit tax for the first half of June by June 20

Discussion and Public Comment

- Comments
- Questions
- Next steps

Appendix C:
Summary of AST Workgroup Meeting

A. Presentation on the history and administration of AST in Virginia and other states (Joe Mayer and Steve Klos from the Department of Taxation).

B. Public Comment – Summary of Issues Raised by Workgroup:

   a. AST Threshold Limits.
   b. Timing of AST.
   c. Additional notice of any upcoming AST requirements.
   d. Issues with fraud production features when applying AST credit card payments.
   e. Communication about the waiver process.
   f. Penalties for late payment.
   g. How revenue from AST is used or why it is needed.
   h. Waiver requirements
   i. Possible Alternatives:
      i. Do nothing.
      ii. Semi-monthly filing.
      iii. Higher threshold.
      iv. Eliminate AST.

C. Next Steps:

   a. Please provide written public comments by Friday, October 27.
   b. The Department will draft a report, which will be circulated to working group participants.
   c. After the review and comment period, a final report of findings and recommendations will be submitted no later than the first day of the 2018 Regular Session of the General Assembly.

Appendix D
Workgroup Meeting Participants

Last Name	First Name	Organization
Baker	Kate	Virginia Retail Federation/ Retail Alliance
Burns	Craig	Department of Taxation
Byrne	Rick	Department of Taxation
Carter	Stuart	Department of Taxation
Collins	Kristin	Department of Taxation
Jones	Petrina	Virginia Retail Merchants Association
Kennington	Charles	Senate Finance Committee Staff
Klos	Stephen	Department of Taxation
Machlan	David	Virginia Society of CPAs
Martin	Keith	Virginia Chamber of Commerce
Mayer	Joseph	Department of Taxation
Oman	Anne	House Appropriations Committee Staff
Roth	Jodi	Virginia Retail Federation
Toellner	Barbara	Department of Taxation
Vinoles	Vanessa	Department of Taxation
West	Brittany	Hunton & Williams
White	William	Department of Taxation

Appendix E

NFIB
The Voice of Small Business.

VIRGINIA

October 27, 2017

Mr. Craig Burns, Commissioner
Virginia Department of Taxation
Post Office Box 27185
Richmond, Virginia 23261-7185

Dear Mr. Burns:

On behalf of the 6,700 members of the National Federation of Independent Businesses, we appreciate the opportunity to provide written comments related to the Commonwealth's tax policy known as the "accelerated sales tax". Approximately, one quarter of NFIB/Virginia's membership is in the retail industry and our average member employs 10 or less employees.

With the current threshold of $2.5 million in sales, a significant amount of our retail members are subject to making the accelerated payment in June. This creates a financial burden on many small retailers. As you know, the past recession was one of the deepest and longest recessions in recent memory. Even more significant has been the slow, drawn out recovery from the recession. No one has felt that painful experience more than the small retailer. Profit margins are already slim in the retail business and when faced with small to little gains in sales, policies such as the accelerated sales tax place a terrible financial burden on small businesses.

Since the re-institution of the accelerated sales tax payment, we've heard from many of our members on the difficulty it is to pre-pay their June payment a month ahead of schedule. For small retailers preparing and setting aside revenue to make the accelerated payment is very difficult. I've had members reveal they've been forced to taking out a loan or a line of credit to the pay the accelerated payment.

While we would like to see the entire accelerated sales tax policy eliminated on all retailers, we hope the Commonwealth of Virginia will take a serious step forward in phasing out the accelerated sales tax by raising the threshold to a number where the vast majority of Virginia's small and independent retailers are not required to make the payment.

Sincerely,

Nicole a. Riley

Nicole Riley
Virginia State Director

Appendix F

October 26, 2017

TO: Mr. Steve Klos
Policy Analyst
Office of Tax Policy, Policy Development Division
Virginia Department of Taxation

FROM: David Machlan
Tax Advisory Committee ("TAC") member
Virginia Society of Certified Public Accountants

RE: **TAC Member Comments about the AST process**

In the regular monthly meeting of the Tax Advisory Committee of the VSCPA held on October 18, 2017, there was a report provided by David Machlan who was the TAC representative that attended the AST workgroup on October 12th. The AST was discussed by those TAC members attending the call and comments were noted. Subsequent to the call, the TAC members were contacted by email for any additional comments.

The following are comments for which most of the TAC members that participated on the monthly call agreed.

<u>Semi-monthly (S-M) filing –</u>

1. Moving to a S-M filing requirement would not seem to accomplish the revenue requirement currently expected of the AST.
2. If S-M filing was enacted as part of any change to the AST process, this would be a burden on all taxpayers but in particular, small sales and use tax filers. Their filings and tax remittances would increase from 12 to 24 annually if they file semi-monthly.
3. Businesses must file bi-weekly for payroll purposes. S-M filing for sales tax would create additional complexity for small business as the due dates for the two filings do not correlate.
4. Any requirement for semi-monthly filing should include a taxable sales threshold amount sufficiently high to prevent most small business filers from being affected.

<u>Threshold amounts –</u>

1. Generally, the threshold amounts are too low (in 2017, the threshold amount was $2.5 million). A greater amount of the AST should be shouldered by larger taxpayers.

The following comments were provided as a follow up to the call by an individual TAC member. As these comments were received after the TAC meeting call, they were not discussed among members of the TAC.

It is apparent, given the budget dependence on the AST, that this cannot be modified greatly. However, I think there is confusion among taxpayers, as well as oversight and administration issues at the department that could be alleviated.

To simplify matters, one might consider making AST payments a requirement of all taxpayers so there isn't confusion as to whether you are or are not liable, and the department would not feel compelled to send out multiple reminders or determine filling requirement thresholds. An AST payment in June of possibly 90% of the previous June's liability or maybe a choice of paying the lowest liability of the last 12 months should be doable. Revising the format of the June sales tax form that would reconcile the June sales tax liability and the AST payment would make the process clearer, making this the standard form filed by all taxpayers.

There would be no burden of closing the books early in June to figure the AST payment. However, some taxpayers might feel a financial crunch of having two payments in June, but might like the financial windfall in July of having only the smaller reconciling payment. But having an AST requirement across the board for all taxpayers would alleviate confusion and potentially financial hardship for those taxpayers who are borderline on the current filing threshold, resulting in 13 payments some years and 11 payments others, playing havoc with their annual cash requirements budget.

A requirement for filing waivers a little earlier might alleviate some of the administrative burden on the department, as a larger number of waivers would be expected to be filed.

The transition year for such a change would be the hardest, but in years following, I believe taxpayers would come to expect to have to budget in a way that provides the funds needed for the AST payment.

Appendix G

Friday, October 27, 2017

Mr. Steve Klos
Policy Analyst
Office of Tax Policy, Policy Development Division
Virginia Department of Taxation
Post Office Box 27185
Richmond, Virginia 23261-7185

Dear Mr. Klos,

Please accept the following remarks as Virginia Retail Merchants Association's entry to the work group's public comment process. We appreciate your service to the Commonwealth and the opportunity to participate in the Accelerated Sales Tax Work Group. We respectfully submit the following remarks.

Accelerated Sales Tax Limits

OPENING

Senator Glen Sturtevant (R-Powhatan) and the Virginia Retail Merchants Association (VRMA) proactively advocated for accelerated sales tax limits during the 2017 General Assembly Session. Additionally, we respectfully objected to any further accelerated sales tax practices by Governor Terry McAuliffe (D), the House Appropriations Committee and the Senate Finance Committee. We encourage Virginia's decision makers to fight the urge to fix shortfalls or balance the state budget to the detriment of the retailers. The current threshold and the unpredictability of new thresholds has caused cash flow problems for small and mid-size retailers in the Commonwealth. Many of these businesses are already operating on small margins. Many did not budget to pay early sales taxes in the month of June. We urge your tax professionals to meet with private sector business owners and their accountants to hear the realities of separating funds at the point of sale, accessibility to cashier technology that automatically separates monies at point of sale, the after-effects of being charged a 6% late penalty fee, effects of unpredictability on business planning and more.

Senator Sturtevant and the VRMA call for responsible measures to be approved that set limits on accelerated sales tax practices and a plan for total elimination of accelerated sales tax collections. The VRMA, as an organization, has lobbied Virginia's legislature since 1905 and still consistently aims to improve the business climate for all of Virginia's retailers.
We propose to the General Assembly:

- Limit the ability of the General Assembly to lower the accelerated sales tax threshold by more than 10% in one year when threshold is at $15M or less.

- Mandate the Department of Taxation to provide earlier notice, 9 months, to prepare for an accelerated sales tax payment. Currently the notices are delivered in the month of May for an accelerated sales tax payment in June.

- Waive the 6% penalties on late payments if less than 9 months notice is given by the Department of Taxation.

- Waive the 6% penalty for late payment for new retailers captured when lowering the threshold.

- Expand the “hardship” definition to include more retailers and/or lower the 6% penalty fee.

- Adopt language that includes an elimination provision by the year 2020.

PROBLEM STATEMENT

For far too long, Virginia retailers have been promised a total phase-out of the Virginia General Assembly’s Accelerated Sales Tax. They have been subjected to both positive and negative but wholly **unpredictable changes** in the threshold since Governor Jim Gilmore’s administration in 2001. In addition, the vendor allowance or dealer discount provided for offsetting the retailer’s time remitting the tax was eliminated. Retailers count on certainty and responsible practices by their state legislatures, however, in Virginia, future accelerated sales tax mandates are an unknown factor. Virginia’s retailers are unable to apply with confidence an educated expectation of financial obligations for the completion of 5-year financial planning. As any business owner will tell you, unpredictability of any kind threatens the viability and survivability of a merchant.

HISTORY

Over a decade ago the Accelerated Sales Tax concept was born in Virginia, the threshold amount of sales obligating retail merchants changed drastically during many budget cycles. The Virginia General Assembly and their financial advisors used these practices as a way to create the appearance of balancing the budget. In reality, the practice requires retailers and other businesses to submit 13 payments in a fiscal year creating a hole in the next year’s budget and creating a cyclical threshold problem. Accelerated Sales Tax payments language inserted into Governor Gilmore’s 2001 outgoing budget additionally appeared in the 2002-2004 biennium budget. Dealers who generated taxable sales of $1.3 million dollars or more for the 12-month period ending June 2001 were required to make the accelerated payments. The payment amount equals 90% of the previous years June liability. Under the new requirement, dealers were obligated to remit sales taxes collected in June on June 25 as opposed to July and sales tax collected in May on June 30. In 2004, the Virginia Retail Merchants Association led a coalition with other members of the business community to address this issue with the administration. In doing so successfully, the General Assembly reduced the number of impacted vendors from 145,000 to approximately 6800. This one time fix amounted to $118 Million. Unfortunately, there was no formal phase-out language of legislative intent included to begin phasing out in FY2006 and completed by FY2012.

Meanwhile, in June 2001 a Joint Subcommittee to Study and Revise Virginia’s State Tax Code convened a first organizational meeting. Accelerated Sales Tax was not originally in the Joint Subcommittee’s mandate to discuss. However, during the next fifteen meetings the retail industry presented the concern before them at one meeting of Task Force #2 led by then Delegate Bob McDonnell. By September of 2002, the joint subcommittee had officially inserted on their the restructuring list of recommendations to eliminate June accelerated sales tax collections in 2002-2004 budget, pushing $118 million back to FY 03. (Task Force 2 -- Item 8) It is important to note, at the meeting in September 2002, the committee agreed that the elimination of the accelerated sales tax collections is an equity tax principle as referenced in the chart on 9/12/2002 on the Task Force #2 Issue Form.

Dr. John H. Bowman, Professor of Economics, Virginia Commonwealth University, gave a presentation on principles underlying tax systems and identified various tax principles generally present in good tax systems. Dr. Bowman's recommended four main principles or criteria to evaluate tax systems are equity, efficiency, adequacy, and predictability.

Dr. Bowman defined equity:

> The equity of a tax system means the fairness of the tax burden upon the taxpayers impacted. One approach in analyzing equity is to determine to what extent the costs of providing government services are paid for by taxes or other charges upon the users of such services. This approach considers the degree to which a tax system is functioning as an economic market, i.e., is it the user who is demanding the service the person who is paying the tax or other charge imposed to fund the cost of providing the service? As with any approach in analyzing the equity of a tax system, there are limitations with this market approach. For instance, it is sometimes difficult to quantify or measure the tax. This is called horizontal equity. In addition, this approach favors benefits of particular government services.
>
> A second approach in analyzing the equity of a tax system, the ability-to-pay approach, examines how taxes impact taxpayers with a greater ability to pay. This approach requires an agreement on the standard for measuring one's ability to pay taxes, whether that standard be income, wealth, family size, or other factors. Under this approach, taxpayers in similar circumstances should essentially be paying the same amount of differing tax burdens for those with different abilities to pay. This is called vertical equity.

Dr. Bowman defined efficiency:

> Efficiency as it relates to tax systems means the avoidance of waste or getting as much as possible from available resources. There are two major considerations in evaluating the efficiency of a tax system. First, consumer and business decisions for purchasing or investing should not be directly affected by taxes. Second, a tax system should be simple to comply with and simple to administer. The level of resources required to administer and to comply with a tax system is key for purposes of evaluating simplicity.

Dr. Bowman defined adequacy:

> Adequacy relates to the revenue-producing capacity of the tax base and the level of government services to be funded. The more inadequate a tax base (i.e., the ability to generate revenues is limited in relationship to the agreed upon level of government services), the more likely there will be a high effective tax burden imposed on those left to pay.

Dr. Bowman defined predictability:

> As the Virginia constitution requires a balanced budget, predictable revenues are extremely important in appropriating state funds. Volatile tax bases are less desirable as they introduce more uncertainty in making appropriations.

By May 2002, Dr. Bowman had made his case and the joint subcommittee agreed to adopt Dr. Bowman's set of tax principles to include in the study as guidance for the 2003 General Assembly and to guide their work in revising the tax code.

As a result of the recommendations of the joint subcommittee, the 2003 General Assembly passed the following language to be applied in FY2005 for the FY2006 accelerated sales tax payments:

> In addition to the amounts required under the provisions of this section and § 58.1-616, any dealer as defined by § 58.1-612 or direct payment permit holder pursuant to § 58.1-624, with taxable sales and purchases of $1,300,000 or greater for the 12-month period beginning July 1, and ending June 30 of the immediately preceding calendar year, shall be required to make a payment equal to 90 percent of the sales and use tax liability for the previous June. **Beginning July 1, 2005, for the payment required in 2006, the payment required under this subdivision shall only apply to such dealers or direct payment permit holders with taxable sales and purchases of <u>$50,000,000 or greater</u> for such period of time and the payment required shall equal 20 percent of the sales and use tax liability for the previous June.**

In addition, in 2003 the House voted 94-0 on a Constitutional amendment (HJ656 to prohibit the Commonwealth from ever allowing such a practice again). By 2005, the VRMA was able to convince the legislature to reduce the number of retailers impacted from nearly 10,000 down to under 400. An amendment was adopted in the budget to raise the threshold on taxable sales from $1.3 million to $30 million.

In 2006, the accelerated sales tax language was repealed. While this language gave Virginia retailers relief, it was short lived. The first budget enacted under the McDonnell administration reinstated accelerated sales tax and took effect on July 1, 2010. One of McDonnell's legislative initiatives assisted in increasing the surplus for the 2009–2010 fiscal year. The budget bill accelerated the payment of state sales taxes resulting in a one-time shift of revenues to be collected in July 2010 into the previous fiscal year.

The below chart illustrates the continued accelerated sales tax activity up to the current year.

Enacting Legislation	Payment in June of	Applied to Dealers with taxable sales and purchases of
HB29 (Acts of Assembly 2010, Chapter 872) HB30 (Acts of Assembly 2010, Chapter 874)	2010	$1 million or more
HB1500 (Acts of Assembly 2011, Chapter 890)	2011	$5.4 million or more
HB1300 (Acts of Assembly 2012 Special Session 1, Chapter 2)	2012	$26 million or more
No Change	2013	$26 million or more
HB1500 (Acts of Assembly 2013, Chapter 806) HB5001 (Acts of Assembly 2014 Special Session, Chapter 1)	2014	$48.5 million or more
HB1400 (Acts of Assembly 2015, Chapter 665)	2015	$2.5 million or more
HB1400 (Acts of Assembly 2015, Chapter 665)	2016	$2.5 million or more
HB30 (Acts of Assembly 2016, Chapter 780)	2017	$10 million or more*
HB30 (Acts of Assembly 2016, Chapter 780)	2018	$25 million or more*
HB1500 (Acts of Assembly 2017, Chapter 836)	2017	$2.5 million or more
HB1500 (Acts of Assembly 2017, Chapter 836)	2018	$4 million or more

** Governor McAuliffe announced in December 2016 he will suspend Accelerated Sales Tax Relief in the 2017 Budget. Previously, during the 2016 General Assembly Session, Accelerated Sales Tax Relief passed in the form of raising the current $2.5M threshold to $10M in 2017 and $25M in 2018. The Governor's announcement meant* *that the $2.5M threshold will stay in place during 2017. Therefore, retailers experienced more unpredictability from the state government having the threshold change again in a"yo-yo" like manner.*

SOLUTION

The Virginia Retail Merchants Association proposes to recommend legislation to the 2018 General Assembly Session. Senator Glen Sturtevant (R-Powhatan) has agreed to sponsor this legislation on our behalf. This proposed legislation will recommend the following actions to provide certainty to our retailers:

- Limit the ability of the General Assembly to lower the accelerated sales tax threshold by more than 10% in one year when threshold is at $15M or less.
- Mandate the Department of Taxation to provide earlier notice, 9 months, to prepare for an accelerated sales tax payment. Currently the notices are delivered in the month of May for an accelerated sales tax payment in June.
- Waive the 6% penalties on late payments if less than 9 months notice is given by the Department of Taxation.
- Waive the 6% penalty for late payment for new retailers captured when lowering the threshold.
- Expand the definition of "hardship" and/or lower the 6% late penalty fee.
- Adopt language that includes an elimination provision by the year 2020.

CONCLUSION

The Virginia Retail Merchants Association will continue to pursue parameters around Virginia's accelerated sales tax practices. Protecting our members is our first priority, therefore we call on the members of the 2018 Virginia legislature to draft tax policy that assists rather than hinder the remitters of Virginia's sales tax collections. It is our mission to remind decision makers that accelerated sales tax policy is in fact an erroneous and misleading method in balancing the budget. Many highly regarded and currently serving legislators, Governors, and tax policy experts have called the practice a gimmick, plain and simple. Virginia retailers will advocate for incorporating limits on the accelerated sales tax threshold levels. Virginia's retailers request more notice from their state government. They need a reasonable amount of time to prepare for an accelerated sales tax payment. We will push for language adoption providing a total elimination of the accelerated sales tax program. The retailers of Virginia have operated in good faith by remitting sales tax collections for their Commonwealth even though the vendor allowance or dealer discount was eliminated. Rather than abandoning the approved tax principles provided by the Joint Subcommittee to Study the Tax Code in 2003, we encourage the Commonwealth to reconsider those core principles and additionally seek out advice and feedback from skilled tax policy professionals from the private sector. We believe the time has come to craft new innovative tax policy. It is time to set things right. Stop the practice of misleading reports of Virginia's finances. It is with urgency we ask for equity, efficiency, adequacy and predictability when it comes to balancing the 2018 budget by our next General Assembly.

For more information, please contact Petrina Jones at 804.643.0605 or pjones@virginiaretail.org.

Many regards,
Petrina Jones