

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

1. **Patron** Vivian E. Watts

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Taxable Services

2. **Bill Number** HB 889

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would impose the Retail Sales and Use Tax (“RSUT”) on digital personal property delivered electronically and several personal and professional services, including communications services that are not subject to the Communications Sales and Use Tax (“CSUT”) and are not digital personal property.

The bill would provide for RSUT exemptions for other enumerated services including certain health care services, veterinary services, professional services, Internet access services, and services provided by a person who does not receive more than \$2,500 per year in gross receipts for performance of such services. The bill would also exempt services purchased by nonprofit organizations and services purchased by a homeowners’ association or by a landlord for the benefit of his tenant.

The bill would also repeal the service exemptions currently provided for the sale of custom programs and modification of prewritten programs and impose CSUT on prepaid calling services and on digital subscription services, including streaming services.

The bill would also exempt food purchased for human consumption and essential personal hygiene products from all state, local, and regional sales taxes. Under current law, food purchased for human consumption and essential personal hygiene products are subject only to the 1 percent local option sales tax.

General Fund revenues generated by imposing the state RSUT on taxable services and digital personal property that are not otherwise dedicated to transportation and education purposes would be distributed to localities on the basis of high-need student population.

Current law provides that most personal and professional services, digital products delivered electronically where no tangible personal property was offered as part of the sale, custom software, modifications to pre-written software, and digital subscription and streaming services are exempt from RSUT. Current law also provides that maintenance contracts and warranties, the terms of which provide for both repair or replacement parts and repair labor, are subject to tax upon one-half of the total charge for such contracts only.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024.

6. Budget amendment necessary: Yes:

Item(s): Page 1, Revenue Estimates
258 and 260, Department of Taxation

7. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

8. Fiscal implications:

Administrative Costs

Due to the system and form changes required by this bill and the resources already committed to implementing legislation enacted during the 2023 General Assembly session, the Department would be unable to implement this legislation until at least one year after the effective date of this bill. As a result, the Department requests a delayed effective date of July 1, 2025. Administrative costs, as outlined below, reflect the requested delayed effective date.

This bill would result in administrative costs to the Department of Taxation (“the Department”) of \$919,970 in Fiscal Year 2025, \$274,356 in Fiscal Year 2026, \$221,958 in Fiscal Year 2027, \$226,966 in Fiscal Year 2028, \$231,972 in Fiscal Year 2029, \$236,980 in Fiscal Year 2030. Such costs would primarily consist of updating the Department’s systems to implement the changes that would be made by this bill, including making updates to allow the Department to separately track sales of digital personal property and the services that would be subject to taxation under this bill, as well as two FTEs for compliance purposes.

Revenue Impact

This bill would have a net overall positive revenue impact of \$915.8 million in Fiscal Year 2025, \$1,044.5 million in Fiscal Year 2026, \$1,087.5 million in Fiscal Year 2027, \$1,131.0 million in Fiscal Year 2028, \$1,183.5 million in Fiscal Year 2029, and \$1,239.0 million in Fiscal Year 2030. The table below shows the overall estimated revenue impact of all changes proposed by the legislation (\$ in millions):

		FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
RSUT	Food and Personal Hygiene Products	(\$272.5)	(\$309.4)	(\$326.2)	(\$344.7)	(\$356.7)	(\$368.2)
	Selected Services	\$1,056.3	\$1,200.7	\$1,251.1	\$1,303.6	\$1,358.4	\$1,415.4
	Digital Downloads	\$48.6	\$57.2	\$61.3	\$65.4	\$69.5	\$73.6
CSUT to Streaming Services (Distributed entirely to localities)		\$83.4	\$96.0	\$101.3	\$106.7	\$112.3	\$118.2
Total Impact		\$915.8	\$1,044.5	\$1,087.5	\$1,131.0	\$1,183.5	\$1,239.0

The table below shows the net impact to the individual funds as follows (\$ in millions):

	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
GF-Restricted	\$575.7	\$655.4	\$683.8	\$713.3	\$744.0	\$775.9
GF-Transfers	\$69.7	\$79.3	\$82.8	\$86.4	\$90.1	\$93.9
Transportation	\$171.8	\$195.6	\$204.1	\$212.9	\$222.1	\$231.6
Local	\$1.9	\$4.0	\$1.9	(\$1.4)	\$2.4	\$7.4
Other	\$96.7	\$110.1	\$114.9	\$119.8	\$125.0	\$130.3
Total	\$915.8	\$1,044.5	\$1,087.5	\$1,131.0	\$1,183.5	\$1,239.0

The positive impact to state funds reflects the combined impact of extending the RSUT to digital property and select services. The impact to localities reflects the positive impact to localities from extending the CSUT to streaming services, the local option sales tax generated by extending the RSUT to digital downloads, and select services, and the offsetting reduction in local revenues from exempting food purchased for human consumption and essential personal hygiene products from the local option sales tax.

The table below shows the estimated impact of extending RSUT to digital personal property (in \$ millions):

	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
GF-Restricted	\$25.3	\$29.8	\$31.9	\$34.1	\$36.2	\$38.4
GF-Transfers	\$3.1	\$3.6	\$3.9	\$4.1	\$4.4	\$4.6
Transportation	\$7.6	\$8.9	\$9.5	\$10.2	\$10.8	\$11.4
Local	\$8.4	\$9.9	\$10.6	\$11.3	\$12.0	\$12.7
Other	\$4.3	\$5.0	\$5.4	\$5.7	\$6.1	\$6.4
Total	\$48.6	\$57.2	\$61.3	\$65.4	\$69.5	\$73.6

The table below shows the estimated impact of extending RSUT to the services identified in the bill (in \$ millions):

	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
GF-Restricted	\$550.4	\$625.6	\$651.9	\$679.2	\$707.8	\$737.5
GF-Transfers	\$66.6	\$75.7	\$78.9	\$82.2	\$85.7	\$89.3
Transportation	\$164.3	\$186.7	\$194.6	\$202.8	\$211.3	\$220.1
Local	\$182.5	\$207.5	\$216.2	\$225.3	\$234.7	\$244.6
Other	\$92.5	\$105.1	\$109.5	\$114.1	\$118.9	\$123.9
Total	\$1,056.3	\$1,200.7	\$1,251.1	\$1,303.6	\$1,358.4	\$1,415.4

Include both Business-to-Consumer (BTC) and Business-to-Business (BTB) transactions.

The table below shows the estimated impact of extending CSUT to streaming services (\$ in millions), which is distributed entirely to localities under the bill:

	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Local	\$83.4	\$96.0	\$101.3	\$106.7	\$112.3	\$118.2

The table below shows the total estimated revenue impact of all changes proposed by the legislation on localities (\$ in millions):

	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
CSUT to Streaming Services	\$83.4	\$96.0	\$101.3	\$106.7	\$112.3	\$118.2
RSUT Digital Downloads	\$8.4	\$9.9	\$10.6	\$11.3	\$12.0	\$12.7
RSUT Selected Services	\$182.5	\$207.5	\$216.2	\$225.3	\$234.7	\$244.6
RSUT Food and Personal Hygiene Products	(\$272.5)	(\$309.4)	(\$326.2)	(\$344.7)	(\$356.7)	(\$368.2)
Total Local	\$1.9	\$4.0	\$1.9	(\$1.4)	\$2.4	\$7.4

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities

10. Technical amendment necessary: Yes. In order to clarify the distribution of the revenue generated by the imposition of sales and use taxes on taxable services and digital personal property, the Department suggests the following amendment:

Page 18, Line 1085, after However, revenues
Insert: generated by the imposition of sales and use taxes on taxable services and digital personal property, as defined in § 58.1-602, pursuant to legislation enacted by the 2024 Regular Session of the General Assembly

11. Other comments:

Retail Sales and Use Tax

Since the Retail Sales and Use Tax was first imposed in 1966, it has been limited to sales of tangible personal property and a few services in connection with the sale of tangible personal property. Specifically, current law provides an exemption from sales tax for the following services:

- Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made
- Services rendered by repairmen for which a separate charge is made

- Amounts separately charged for labor or services rendered in installing, applying, remodeling, or repairing property sold or rented
- Transportation charges separately stated
- Separately stated charges for alterations to apparel, clothing and garments
- Charges for gift wrapping services performed by a nonprofit organization

Additionally, custom programs and amounts separately charged for labor or services rendered in connection with the modification of prewritten programs are also exempt from the tax.

Maintenance contracts and warranties, the terms of which provide for both repair or replacement parts and repair labor, are subject to tax upon one-half of the total charge for such contracts only. The current 50 percent taxability rule provides ease of administration for sellers of such contracts as it may be difficult or impossible to determine, at the time of sale, the value of any tangible personal property or taxable service that may accrue to the purchaser during the life of the contract.

Communications Sales and Use Tax

The Communications Sales and Use Tax is levied on the customers of communications services at a rate of five percent. The sale or recharge of a prepaid calling service is currently exempt from the tax. Digital products delivered electronically, such as software, downloaded music, ringtones, and reading materials are also exempt. Revenue from CSUT, after deductions for telephone relay service and franchise fees, is allocated amongst the localities of the Commonwealth based on each locality's pro rata distribution from CSUT revenues in 2010.

Digital Downloads and Streaming

Services not involving an exchange of tangible personal property which provide access to or use of the Internet and any other related electronic communication service, including software, data, content and other information services delivered electronically via the Internet, are currently exempt from RSUT and CSUT. This exemption currently extends to streaming services.

Food Purchased for Human Consumption and Essential Personal Hygiene Products

Food purchased for human consumption and essential personal hygiene products are subject only to the 1 percent local option sales tax. These items are not subject to the state sales tax, the regional sales tax levied in transportation districts, or the additional local sales tax levied in some localities to pay for school construction.

"Food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, as amended, and federal regulations adopted pursuant to that Act, except it does not include seeds and plants which produce food for human consumption. "Food purchased for human consumption" does not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail

establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment.

“Essential personal hygiene products” means (i) nondurable incontinence products such as diapers, disposable undergarments, pads, and bed sheets and (ii) menstrual cups and pads, pantyliners, sanitary napkins, tampons, and other products used to absorb or contain menstrual flow.

Proposed Legislation

Retail Sales and Use Tax

This bill imposes RSUT on digital personal property, defined in the bill as a digital product delivered electronically that the purchaser owns or has the ability to continually access without having to pay an additional subscription or usage fee to the seller after paying the initial purchase price.

The bill would make the following services subject to RSUT:

- Admissions;
- Charges for recreation,
- Fitness, or sports facilities;
- Nonmedical personal services or counseling;
- Dry cleaning and laundry services;
- Companion animal care;
- Residential home repair or maintenance,
- Landscaping, or cleaning services when paid for directly by a resident or homeowner;
- Vehicle and engine repair;
- Repairs or alterations to tangible personal property;
- Storage of tangible personal property;
- Delivery or shipping services;
- Travel, event, and aesthetic planning services; and
- Communications services that are not subject to the communications sales and use tax and are not digital personal property.

The bill would exempt certain services from RSUT, including:

- Health care services that must be performed by a person licensed or certified by the Department of Health Professions,
- Veterinary services,
- Professional services,
- Internet access services,
- Services provided by a person who does not receive more than \$2,500 per year in gross receipts for performance of such services
- Services purchased by a nonprofit organization, and

- Services purchased by a homeowners' association or by a landlord for the benefit of his tenant.

The bill would also repeal the service exemptions currently provided for the sale of custom programs and modification of prewritten programs.

The bill would eliminate the current provision for application of the tax to only one-half of the total charge for maintenance contracts and warranties, the terms of which provide for both repair or replacement parts and repair labor.

The bill would also exempt food purchased for human consumption and essential personal hygiene products from all state, local, and regional sales taxes.

General Fund revenues generated by imposing the state RSUT on taxable services and digital personal property that are not otherwise dedicated to transportation and education purposes would be distributed to localities on the basis of high-need student population. "High-need student population" would be defined as the number of students in a locality who are (a) identified students, as defined in 42 U.S.C. § 1759a or any successor provision; (b) participants in a program of special education established pursuant to Article 2 (§ 22.1-213 et seq.) of Chapter 13 of Title 22.1; or (c) English language learners.

Communications Sales and Use Tax

The bill would impose CSUT on prepaid calling services and "digital subscription services." "Digital personal property" would be defined as digital products delivered electronically, including software, digital audio and audiovisual products, reading materials, and other data or applications, that the purchaser owns or has the ability to continually access, whether by downloading, streaming, or otherwise accessing the content, without having to pay an additional subscription or usage fee to the seller after paying the initial purchase price. "Digital subscription services" would be defined as a service, including audio and visual streaming services, which for a fee allows the user to access and use software, reading materials, or other digital data or applications for a defined period of time, and which products the user does not own or have permanent access to outside of such period of time.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024.

Similar Legislation

House Bill 1281 and **Senate Bill 632** would expand the application of sales tax to include digital personal property and certain taxable services in addition to tangible personal property.

Senate Bill 703 would tax digital personal property and streaming services.

cc: Secretary of Finance

Date: 2/3/2024 JEM
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