

# New taxes aren't just coming from Capitol Hill - Virginia sales taxes are going up too



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As if the 2012 year-end controversy and excitement surrounding Washington with Obamacare and the Fiscal Cliff wasn't enough, Virginia has taken the opportunity to sneak in a sales tax increase that will be coming into effect on July 1, 2013. A complete overview of the new regulations and a YouTube video from the Virginia Department of Taxation is linked below for your reference.

Without going too much into the specifics of the regulations, which are available on the Department's website, the general sales tax rate is going to increase statewide from 5% to 5.3%. Also effective July 1, 2013 there will be an additional 0.7% regional sales and use tax levied on purchases in the Northern Virginia and Hampton Roads regions\* which causes the total sales and use tax rate to be 6%. There are specific sourcing and transitional requirements, outlined in the draft guidelines dated April 8, 2013, which determine if a purchase will be subject to the new sales tax rates and if it will be sourced to Northern Virginia or Hampton Roads. Final guidelines are expected in May 2013. With this new regional tax, the tax rate charged can be different depending on where the sale is sourced, which has not been the case in Virginia for some time.

With the new sales tax rates being effective July 1, there will be transactions which have been ordered, delivered and or paid for prior to the effective date for which someone would question the rate that should apply. In order to assist with these questions the transitional rules are outlined in the draft guidelines. These rules are summarized in the following scenarios:

1. Tangible personal property *both* paid for and delivered after July 1, 2013 will be subject to the higher tax rates, regardless of when it is ordered.
2. Tangible personal property delivered prior to July 1, 2013 but paid for *after* July 1 will *not* be subject to the higher tax rates.
3. Tangible personal property delivered after July 1, 2013 but paid for *prior* to July 1 will *not* be subject to the higher tax rates.
4. A sale or lease payment that may be delivered after July 1, 2013 but is paid for in

full will *not* be subject to the higher tax rates.

Additionally, there may be long term contracts for rental of property or construction of tangible property which were signed before the effective date of the increased tax rates. In those situations, the legislation provides for a refund of the additional tax if certain conditions are met. The basic conditions are that the contract needs to be signed before April 3, 2013 (the date the legislation was signed) and the property must be delivered before September 30, 2013. There are other refund provisions for long term contracts of real property or highway contracts that were signed prior to April 3, 2013, but other specific rules may apply and can be found in the guidelines.

Since there are now different rates that should be charged based on which region a sale is sourced to, it is more important to understand the sourcing of rules in order to make sure the correct sales tax rate is charged. The sourcing rules for the additional 0.7% regional tax in Northern Virginia and Hampton Roads follow how sales are sourced for local sales tax. These sourcing rules are summarized as follows:

1. Tangible personal property purchased at a seller's place of business, if located in Northern Virginia or Hampton Roads, will be subject to the additional regional tax regardless of where the goods are ultimately delivered.
2. Tangible personal property purchased remotely (telephone, internet, or mail) from an in-state dealer will be subject to the additional regional tax if the in-state dealer takes the order and fulfills the order from Northern Virginia or Hampton Roads regardless of where the goods are ultimately delivered.
3. Tangible personal property purchased remotely from an out-of-state dealer and not received by the purchaser at the dealer's out-of-state business location will be subject to the additional regional tax if the goods are delivered to the purchaser in Northern Virginia or Hampton Roads. The sale is sourced to where the property is delivered.
4. Tangible personal property leased from an in-state lessor will be subject to the additional regional tax if the lessor's place of business is located in Northern Virginia or Hampton Roads.

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As with any new tax legislation, there are planning opportunities and considerations that businesses can make to comply with the state's regulations. For businesses making large sales around the transition date, payment and delivery terms can be modified so that both do not occur after July 1. Sales will only be subject to the higher tax rates if both payment and delivery occur after the July 1 cutoff. Prepayments and deferred payment contract terms are an effective way to take advantage of the lower tax rates prior to July 1. Businesses with connections to Northern Virginia or Hampton Roads and with other locations in Virginia can also take steps to not be subject to the additional 0.7% regional tax before July 1. A way to do this is to make sure that remote orders (i.e. orders placed by internet, telephone, or mail) are fulfilled from locations outside of Northern Virginia or Hampton Roads. For example, if a customer in South Carolina calls in an order to a retailer in Virginia, the seller would not be subject to 0.7% regional sales tax if the order is filled out of a Richmond store. However, if the same order is filled from a Virginia Beach store, the higher 0.7% sales tax would apply. Additionally, businesses who make purchases from out-of-state dealers can make sure that they only take delivery of the property at locations outside of Northern Virginia or Hampton Roads to ensure they aren't charged the extra regional sales tax.

While on the subject of sales tax, the new "Amazon Law" passed in 2011 which may require out of state dealers with affiliated nexus in Virginia to collect sales tax on sales in Virginia becomes effective September 1, 2013. As internet sales increase, there is more political controversy over the proposed Federal Marketplace Fairness Act which targets online sales. This law would require large internet sellers to collect state sales tax. In summary, there are more changes coming in the Virginia sales tax arena.

For more information surrounding the new Virginia sales tax regulations and further explanation of the planning opportunities available, please contact Keiter at (804) 747-0000.

*\*The Northern Virginia region includes the counties of Arlington, Fairfax, Loudoun, Prince William, and cities of Alexandria, Falls Church, Manassas, and Manassas Park.*

*\*The Hampton Roads region includes the counties Gloucester, Isle of Wight, James City, Southampton, Surry, York, and cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.*

Virginia Department of Taxation overview of the new tax increase <http://www.tax.virginia.gov/site.cfm?alias=changesandupdates>

Draft guidelines from the Department of Taxation <http://www.tax.virginia.gov/Documents/HB2313DraftGuidelines.pdf>

Video explanation of the new regulations (YouTube link) <http://www.youtube.com/watch?v=LBURNOIQ4pM>

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