

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

1. **Patron** Mark D. Obenshain

2. **Bill Number** SB 709

3. **Committee** House Finance

House of Origin:
 Introduced
 Substitute
 Engrossed

4. **Title** Assessment of omitted taxes; Erroneous payments

Second House:
 X **In Committee**
 Substitute
 Enrolled

5. Summary/Purpose:

This bill would provide that upon the application of a taxpayer, if the Department of Taxation (“the Department”) determines that a taxpayer has erroneously remitted retail sales tax payments to the Department with respect to a transaction by a contractor and for which the Department has made a use tax assessment, and such taxpayer has not so requested, the Department must apply the erroneously remitted retail sales tax proceeds to a use tax assessment of the taxpayer for the same transactions.

The bill would also provide that the taxpayer may not apply for and receive such relief if he has previously applied for and received such relief, or in the case of a false or fraudulent action by the taxpayer with the intention of evading the tax. The bill also provides that any such taxpayer would not be entitled to a refund of any retail sales tax payments erroneously remitted unless or until the taxpayer can affirmatively show that the tax has since been refunded to the purchaser or credited to such purchaser's account.

Under current law, when a taxpayer collects sales tax from its customers, the Department may not apply such sales tax to another tax unless the taxpayer shows that it has refunded or credited such sales tax to their customers.

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

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not Available (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

This bill would have no impact on state or local administrative costs.

Revenue Impact

This bill would have no impact on state or local revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Retail Sales and Use Tax on Contractors

Prior to July 1, 2017, contractors installing the following items were required to purchase such items for resale tax exempt and then collect sales tax from their customers:

- Fences,
- Venetian blinds,
- Window shades,
- Awnings,
- Storm windows and doors,
- Locks and locking devices,
- Floor coverings,
- Cabinets,
- Countertops,
- Kitchen equipment,
- Window air conditioning units or
- Other like or comparable items.

During its 2017 Session, the General Assembly enacted House Bill 1890 (*2017 Acts of Assembly*, Chapter 436) and Senate Bill 1308 (*2017 Acts of Assembly*, Chapter 449). Effective July 1, 2017, such legislation required contractors to pay the sales tax on the above items they install for customers at the time of purchase or accrue and pay Use Tax after the purchase. Accordingly, they could no longer collect sales tax from their customers but had to pay the tax themselves, either the sales tax at the time of purchase or the use tax if they did not pay sales tax at the time of purchase.

When a taxpayer collects sales tax from its customers, the Department may not apply such sales tax to another tax unless the taxpayer shows that it has refunded or credited such sales tax to their customers.

Proposal

This bill would provide that upon the application of a taxpayer, if the Department determines that a taxpayer has erroneously remitted retail sales tax payments to the Department with respect to a transaction by a contractor and for which the Department has made a use tax assessment, and such taxpayer has not so requested, the Department must apply the erroneously remitted retail sales tax proceeds to a use tax assessment of the taxpayer for

the same transactions. To be eligible, the taxpayer shall provide evidence of the erroneously paid retail sales tax amount collected and remitted in each transaction.

The bill would also provide that the taxpayer may not apply for and receive such relief if he has previously applied for and received such relief, or in the case of a false or fraudulent action by the taxpayer with the intention of evading the tax. The bill also provides that any such taxpayer would not be entitled to a refund of any retail sales tax payments erroneously remitted unless or until the taxpayer can affirmatively show that the tax has since been refunded to the purchaser or credited to such purchaser's account.

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

Similar Legislation

House Bill 1508 is identical to this bill.

cc : Secretary of Finance

Date: 2/18/2024 VB
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