

2007 - 2011 Virginia Retail Sales and Use Tax Expenditure Study

Volume 1

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

Exemptions Studied:

- Donations of Tangible Personal Property Withdrawn from Inventory (*Code of Va.* § 58.1-609.10 (15))
- Nonprofit Churches (*Code of Va.* § 58.1-609.10 (16))
- Nonprofit Entities (*Code of Va.* § 58.1-609.11)

December 1, 2007



COMMONWEALTH of VIRGINIA

Department of Taxation

December 3, 2007

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

The Honorable John H. Chichester
General Assembly Building, Room 626
Capitol Square
Richmond, Virginia 23219

Dear Delegate Purkey and Senator Chichester:

Enclosed is Volume 1 of the 2007-2011 Virginia Retail Sales and Use Tax Expenditure Study Report prepared by the Department of Taxation ("TAX") pursuant to *Code of Va. § 58.1-609.12*.

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

This is the first volume of the 2007-2011 series and includes a detailed analysis of exemptions that pertain to (1) donations of tangible personal property withdrawn from inventory to any organization exempt from taxation under *Internal Revenue Code ("IRC") § 501(c)(3)* or to the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof (*Code of Va. § 58.1-609.10 (15)*), (2) purchases of tangible personal property by nonprofit churches (*Code of Va. § 58.1-609.10 (16)*), and (3) purchases of tangible personal property by nonprofit entities that have applied to TAX and received an exemption certificate pursuant to *Code of Va. § 58.1-609.11 (Code of Va. § 58.1-609.11)*.

As you will see, the revenues forgone 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. As a result, this study will be unique among the numerous tax expenditure studies that have been conducted by other states, in that it will provide a complete and readily understandable analysis of the major issues surrounding each of these tax exemptions.

The sales and use tax expenditure study 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, sales and use tax exemptions and other tax expenditures have received only limited scrutiny. Unlike expenditures under the budget process, 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 study will help remedy that situation by evaluating at least that portion of sales and use tax expenditures related to miscellaneous and nonprofit exemptions.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Janie E. Bowen', with a stylized flourish at the end.

Janie E. Bowen
Tax Commissioner

JEB/jem
Enclosures

c: Division of Legislative Automated Systems
The Honorable Robert D. Hull

VIRGINIA RETAIL SALES AND USE TAX EXPENDITURE STUDY

Volume 1, Number 1

Jody M. Wagner
Secretary of Finance

Janie E. Bowen
Tax Commissioner

December 2007

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

- Donations of Tangible Personal Property Withdrawn from Inventory (*Code of Va.* § 58.1-609.10 (15))
- Nonprofit Churches (*Code of Va.* § 58.1-609.10 (16))
- Nonprofit Entities (*Code of Va.* § 58.1-609.11)

Future reports will cover other subgroups of the Retail Sales and Use Tax exemptions provided by *Code of Va.* § 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 are grateful for the assistance provided by Lillian Owens, Lead Management Analyst, Nonprofit Exemption Unit and to several agencies of the Commonwealth of Virginia.

We express a special thank you to all contributing private sector representatives, nonprofit organizations and groups who provided answers to surveys and reviewed a draft of the study.

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.

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EXECUTIVE SUMMARY

Authorization for Study

Pursuant to *Code of Va.* § 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 *Code of Va.* §§ 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. No exemption shall be analyzed more frequently than once every five years

There are nineteen exemption categories scheduled to be studied during the 2007-2011 period, and every five-year period thereafter. This is the first volume of the 2007-2011 series and includes a detailed analysis of exemptions that pertain to:

- Donations of tangible personal property withdrawn from inventory to any organization exempt from taxation under *Internal Revenue Code* (“IRC”) § 501 (c)(3) or to the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof (*Code of Va.* § 58.1-609.10 (15)).
- Purchases of tangible personal property by nonprofit churches (*Code of Va.* § 58.1-609.10 (16)).
- Purchases of tangible personal property by nonprofit entities that have applied to TAX and received an exemption certificate pursuant to *Code of Va.* § 58.1-609.11 (*Code of Va.* § 58.1-609.11).

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

Income Tax Exemptions for Nonprofit Organizations

Internal Revenue Code § 501 provides an exemption from income taxes for organizations described in *IRC* § 501(c). Through its conformity with federal income tax law, Virginia also provides that such organizations shall be exempt from state income

taxes. Although a wide variety of organizations may be exempted from federal income tax under *IRC* § 501(c), most Virginians are familiar with organizations qualifying for exemption under *IRC* § 501(c)(3) and (c)(4).

In general, an organization may be exempt under *IRC* § 501(c)(3) if it serves a public rather than a private interest and is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals. In general an organization may be exempt under *IRC* § 501(c)(4) if it is an organization not organized for profit that operates exclusively for the promotion of social welfare, and whose net earnings are devoted to charitable, educational or recreational purposes.

Retail Sales and Use Tax Exemption for Nonprofit Entities

Prior to the 2003 General Assembly Session, 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 also qualify for the exemption.

With passage of House Bill 2525 and Senate Bill 743 (*Acts of the Assembly 2003, Chapters 757 and 758*), 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.

Pursuant to *Code of Va.* § 58.1-609.11 C, an organization must satisfy the following criteria in order to qualify for the exemption:

- Exemption from federal income taxation under *IRC* § 501(c)(3); or under *IRC* § 501(c)(4) if organized for a charitable purpose; or if it has annual gross receipts less than \$5,000 and is organized for at least one of the purposes set forth in *IRC* § 501(c)(3) or one of the charitable purposes set forth in *IRC* § 501(c)(4).
- Compliance with all applicable state solicitation laws.
- Annual general administrative costs, including salaries and fundraising, relative to annual gross revenue not greater than 40 percent.
- If the entity's gross annual revenue was \$1 million or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant. If the entity's gross annual revenue was between \$750,000 and \$1 million, then the entity must provide either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public accountant.

- If the entity filed a federal 990 or 990 EZ tax form with the Internal Revenue Service, then it must provide a copy of such form to TAX.
- If the entity did not file a federal 990 or 990 EZ tax form with the Internal Revenue Service, then the entity must provide a list of the board of directors or other responsible agents of the entity and the location where the financial records of the entity are available for public inspection.

Retail Sales and Use Tax Exemption for Nonprofit Churches

Churches have two alternate options to purchase tangible personal property exempt from the Retail Sales and Use Tax. The first option is to apply for the nonprofit entity exemption certificate under the new process provided by *Code of Va. § 58.1-609.11*. The second option is to use a self-issued Form ST-13A, Certificate of Exemption, pursuant to *Code of Va. § 58.1-609.10(6)*.

Retail Sales and Use Tax Exemption for Items Donated from Inventory

Pursuant to *Code of Va. § 58.1-609.10(15)*, the Retail Sales and Use Tax does not apply to tangible personal property withdrawn from the inventory of a business and donated to a nonprofit organization that is exempt under *IRC § 501(c)(3)* or to the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

Evaluation of Retail Sales and Use Tax Exemption Expenditures

Unlike expenditures under the budget process, sales tax exemptions tend to remain in effect indefinitely. The tax exemptions granted to nonprofits 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 forgone 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 three exemptions that are the subject of Volume 1 of the Virginia Retail Sales and Use Tax Expenditure Study.

Donations of Tangible Personal Property Withdrawn From Inventory

Table 1 reflects the total state and local Retail Sales and Use Tax expenditure resulting from the exemption for donations of tangible personal property withdrawn from inventory to any organization exempt from taxation under *IRC* § 501(c)(3). TAX was unable to find any data on the value of tangible personal property donated to the Commonwealth or its political subdivisions. This limitation affects our revenue analysis as it excludes a potential revenue impact that should be taken into consideration.

Table 1: Total State and Local Sales Tax Expenditure Resulting from Donations of Tangible Personal Property Withdrawn from Inventory to Nonprofit Organizations

<u>Fiscal Year</u>	<u>Revenue Impact from Food</u>	<u>Revenue Impact from Other Property</u>	<u>Total Revenue Impact</u>
2004	\$1,150,136	\$3,009,625	\$4,159,761
2005	\$1,286,117	\$3,836,554	\$5,122,672
2006	\$1,353,686	\$3,231,377	\$4,585,064
2007	\$1,466,864	\$3,580,937	\$5,047,801
2008	\$1,568,639*	\$3,691,813*	\$5,260,453*
2009	\$1,670,414*	\$3,802,689*	\$5,473,104*

* Projected using the CPI – U (September 2007)

Churches

Table 2 reflects the total state and local Retail Sales and Use Tax expenditure resulting from purchases by churches that use the self-issued Form ST-13A, Certificate of Exemption under *Code of Va.* § 58.1-609.10(16).

Table 2: Total State and Local Retail Sales and Use Tax Expenditure Resulting from Purchases of Tangible Personal Property by Churches Using Form ST-13A

<u>Fiscal Year</u>	<u>Revenue Impact</u>
2004	\$2,785,231
2005	\$3,653,195
2006	\$4,154,399
2007	\$4,900,110
2008	\$5,584,694*
2009	\$6,269,277*

* Projected using the CPI – U (September 2007)

Nonprofit Entities

Table 3 sets forth TAX's estimate of the total annual state and local Retail Sales and Use Tax revenue impact of the Nonprofit Entity Exemption. However, this estimate is preliminary and likely underestimates the expenditure due to purchases under the grandfathered exemption enjoyed by Medical-Related Organizations that were formerly allowed an exemption under *Code of Va. § 58.1-609.7*. As this grandfathered exemption does not expire until July 1, 2008, many of the organizations that enjoy this exemption have not yet applied for an exemption under the new process. Accordingly, TAX has little data concerning purchases made by these organizations. According to the 1990-1994 Virginia Sales and Use Tax Expenditure Study (Volume 1, Number 4) issued December 1992, the annual expenditure related to the Medical Related Organizations in Fiscal Year 1991 was \$49.2 million (not adjusted for inflation). Once these organizations have applied for an exemption under the new process later this fiscal year, TAX will have sufficient data to make an estimate, which will be published in Volume 2 of the Virginia Retail Sales and Use Tax Expenditure Study on December 1, 2008.

Table 2: State and Local Retail Sales and Use Tax Expenditure Resulting from Purchases of Tangible Personal Property by Nonprofit Entities

<u>Fiscal Year</u>	<u>Revenue Impact</u>
2007	\$ 143,332,331
2008	\$146,703,204*
2009	\$149,231,359*

* Projected using the CPI – U (September 2007)

INTRODUCTION

Study Mandate

Pursuant to *Code of Va.* § 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 *Code of Va.* §§ 58.1-609.10 and 58.1-609.11 and report 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. No exemption shall be analyzed more frequently than once every five years. 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.</i> § 58.1-609.10(14)	3	2009	Nonprescription Drugs and Nonprescription Drug Samples
<i>Code of Va.</i> § 58.1-609.10(17)	4	2010	Medical Products and Supplies Purchased by Medicaid Recipients
<i>Code of Va.</i> § 58.1-609.10(10)	4	2010	Durable Medical Equipment
<i>Code of Va.</i> § 58.1-609.10(12)	4	2010	Motor Vehicle Equipment for Handicapped Persons
<i>Code of Va.</i> § 58.1-609.10(13)	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

This is the first report of the 2007-2011 study and includes a detailed analysis of exemptions that pertain to:

- Donations of tangible personal property withdrawn from inventory to any organization exempt from taxation under *Internal Revenue Code* (“IRC”) § 501(c)(3) or to the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof (*Code of Va. § 58.1-609.10 (15)*).
- Purchases of tangible personal property by nonprofit churches (*Code of Va. § 58.1-609.10 (16)*).
- Purchases of tangible personal property by nonprofit entities that have applied to TAX and received an exemption certificate pursuant to *Code of Va. § 58.1-609.11 (Code of Va. §§ 58.1-609.11)*.

This report includes detailed information on the policy and fiscal impacts of these three 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 Sales and Use Tax Expenditure 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.

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 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 have escaped 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, 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 enjoy sales and use tax exemptions since the enactment of the tax in 1966.

Income Tax Exemptions for Nonprofit Organizations

Internal Revenue Code (IRC) § 501 provides an exemption from income taxes for organizations described in *IRC § 501(c)*. Through its conformity with federal income tax law, Virginia also provides that such organizations shall be exempt from state income taxes. Although a wide variety of organizations may be exempted from federal income tax under *IRC § 501(c)*, most Virginians are familiar with organizations qualifying for exemption under *IRC § 501(c)(3)* and *(c)(4)*.

In general, an organization may be exempt under *IRC § 501(c)(3)* if it serves a public rather than a private interest and is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals. In general an organization may be exempt under *IRC § 501(c)(4)* if it is an organization not organized for profit that operates exclusively for the promotion of social welfare, and whose net earnings are devoted to charitable, educational or recreational purposes.

In addition to exemption from federal income taxation, many nonprofits qualify to receive tax deductible contributions from donors, issue bonds for which the interest accrued is

excluded from the investor's taxable income, qualify for exemption from state income tax, and in many instances qualify for sales tax and real and property tax exemptions.

Organizations exempt under *IRC* § 501(c)(3) and (c)(4) are subject to restrictions imposed by the federal government, including non-distribution constraints, restrictions on how assets are to be distributed upon dissolution, prohibitions against discrimination and limitations on political lobbying activities

Engaging in commercial activity does not preclude an organization from being deemed a nonprofit. However, any income generated from commercial activity that is unrelated to the organization's exempt purpose maybe subject to the unrelated business income tax ("UBIT"). This is designed to limit unfair competition between for-profit businesses and tax exempt nonprofits.

Retail Sales and Use Tax Exemption for Nonprofit Entities

Prior to the 2003 General Assembly Session, 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 other organization meeting the exemption criteria would also qualify for the exemption.

With passage of House Bill 2525 (*Acts of the Assembly* 2003, Chapter 757) and Senate Bill 743 (*Acts of the Assembly* 2003, Chapters 758), all 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.

Churches have two alternate options to purchase tangible personal property exempt from the Retail Sales and Use Tax. The first option is to apply for a general nonprofit entity exemption certificate under the new process provided by *Code of Va.* § 58.1-609.11. The second option is to use a self-issued Form ST-13A, Certificate of Exemption, pursuant to *Code of Va.* § 58.1-609.10(16).

Pursuant to *Code of Va.* § 58.1-609.10(15), the Retail Sales and Use Tax does not apply to tangible personal property withdrawn from the inventory of a business, and donated to a nonprofit organization that is exempt under *IRC* § 501(c)(3) or to the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

The courts have held that taxation is the rule and exemption is the exception. Therefore, exemptions from the sales tax are strictly construed. Accordingly, in order for a nonprofit to qualify for an exemption, it must meet all of the statutory requirements for the exemption. Generally, nonprofits are granted exemption from the sales tax on their

purchases. However, there are a few exemptions that extend to sales of tangible personal property by a nonprofit. There are also a few exemptions that extend to purchases of taxable services, such as lodging.

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, and Tennessee.
- External Mandates – Identify whether the exemption is required as the result of constitutional, judicial, or statutory mandates, either federal or state.
- State Tax Burden – 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 primary source of information for this study was surveys. Since a large portion of the exemptions deal with nonprofit organizations, the widespread use of surveys was unavoidable.

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.

The analysis of donated tangible personal property to IRC § 501(c)(3) nonprofit organizations is limited by reliable and accurate survey responses from those organizations. Furthermore, the second component of this exemption that pertains to tangible personal property donated from a business's inventory to the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof, was not included in the fiscal analysis. After contacting the Auditor of Public Accounts, the Department of Education, the Attorney General's Office, and the Department of General Services, TAX was unable to find records from government agencies on donated tangible personal property. In studying this exemption TAX also surveyed churches to learn whether they receive donations from businesses. TAX learned through some follow-up interviews that they had included donations made by members of the congregation. Therefore, the analysis pertaining to donated tangible personal property from the inventory of a business must be examined with the understanding that it does not provide a complete or entirely accurate analysis of this exemption. It is however, a significant improvement from previous studies on this topic. For future studies of this exemption, a survey of a sample of government agencies would be a better way to learn about the fiscal impact of this exemption.

The limitations associated with our study of purchases of tangible personal property made by churches mainly pertain to misreporting their purchase amounts. While some churches are equipped to answer questions about their purchases, others lack the resources or understanding to report accurately their purchasing practices.

TAX's estimate of the total annual state and local Retail Sales and Use Tax revenue impact of the Nonprofit Entity Exemption likely underestimates the expenditure due to purchases under the grandfathered exemption enjoyed by Medical-Related Organizations that were formerly allowed an exemption under Code of Va. § 58.1-609.7. As this grandfathered exemption does not expire until July 1, 2008, many of the organizations that enjoy this exemption have not yet applied for an exemption under the new process. Accordingly, TAX has little data concerning purchases made by these organizations. According to the 1990-1994 Virginia Sales and Use Tax Expenditure Study (Volume 1, Number 4) issued December 1992, the annual expenditure related to the Medical Related Organizations in Fiscal Year 1991 was \$49.2 million. Once these organizations have applied for an exemption under the new process later this fiscal year, TAX will have sufficient data to make an estimate, which will be published in Volume 2 of the Virginia Retail Sales and Use Tax Expenditure Study on December 1, 2008.

Report Organization

This report contains a detailed analysis of the exemptions pertaining to:

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- Donations of tangible personal property withdrawn from inventory to any organization exempt from taxation under *Internal Revenue Code* (“IRC”) § 501 (c)(3) or to the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof (*Code of Va.* § 58.1-609.10(15)).
 - Purchases of tangible personal property by nonprofit churches (*Code of Va.* § 58.1-609.10(16)).
 - Purchases of tangible personal property by nonprofit entities that have applied to TAX and received an exemption certificate pursuant to *Code of Va.* § 58.1-609.11 (*Code of Va.* § 58.1-609.11).

A summary of each exemption category is provided. For each category, 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.
- **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 which 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.

**EXEMPTION FOR DONATED TANGIBLE PERSONAL
PROPERTY WITHDRAWN FROM INVENTORY**

AUTHORIZATION

Code of Va. § 58.1-609.10(15) provides a Retail Sales and Use Tax exemption for:

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.

EXEMPTION SUMMARY

This provision grants to businesses an exemption from the Retail Sales and Use Tax for tangible personal property withdrawn from their inventories for donation to organizations exempt from state and federal income tax under IRC § 501(c)(3) and for donation to the state or any of its political subdivisions. Businesses that donate tangible personal property to be used by a qualifying organization are granted the exemption from the sales and use tax on items withdrawn from their inventories conditioned upon the receiving organization being a qualified nonprofit or governmental entity. The exemption is broad in that it applies to all transactions in the process, from the manufacture of the item to its final disposition.

RATIONALE

Code of Va. § 58.1-623 C provides that “[i]f a taxpayer who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him ...” This statute was interpreted by the Virginia Supreme Court in *Commonwealth v. Miller-Morton*, 220 Va. 852, 263 S.E. 2d 413 (1980), which held taxable the storage of tangible personal property in Virginia, even though the property would ultimately be withdrawn and shipped outside of the state. The tax liability is incurred by the taxpayer at the moment the property is placed in Virginia and stored for use by the taxpayer. Based on this precedent, dealers who purchased tangible personal property using a resale exemption certificate, Form ST-10 Sales and Use Tax Exemption Certificate, are subject to the tax on items withdrawn from inventory and donated to governmental, charitable or nonprofit organizations.

In order to ameliorate this situation, this exemption was enacted in 1986 to provide an exemption from sales and use taxation on any tangible personal property removed from a manufacturing, resale or other inventory for donation to a nonprofit organization exempt under *IRC* § 501(c)(3) or to the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

METHODOLOGY

In order to compile the necessary data to conduct a revenue analysis of donated tangible property, TAX chose to survey 371 nonprofit organizations from a sample collected by TAX's Nonprofit Exemption Unit. Of the 371 nonprofit organizations surveyed, TAX received 198 responses, for a 55% response rate. The survey questioned organizations about their exemption status (*IRC* § 501 (c)(3), (c)(4), or other) and the total value of property donated to their organization from businesses inventory over the past three fiscal years. Two of the respondents were discarded because they failed to identify themselves on their response form. As four of the organizations were exempted from federal income taxes under *IRC* § 501(c)(4), only 192 of the responses were used in our analysis. In addition to surveying these nonprofit organizations, TAX also surveyed 718 churches for the value of tangible personal property they had received that was donated from a business inventory. Of this sample, TAX received 247 responses, for a response rate of 34%.

As food is subject to the Retail Sales and Use Tax at a rate of 2 1/2% while other tangible personal property is subject to the tax at the rate of 5%, TAX determined the breakdown of donations to nonprofit organizations between food and all other property by selecting the top 10 recipients of donated tangible personal property and conducting a series of follow-up interviews to determine the percentages of food and other property donated. TAX adjusted the survey responses to reflect these interviews.

The exemption also covers property donated to the Commonwealth or its subdivisions; however the researchers were unable to acquire data on these donations.

REVENUE ANALYSIS

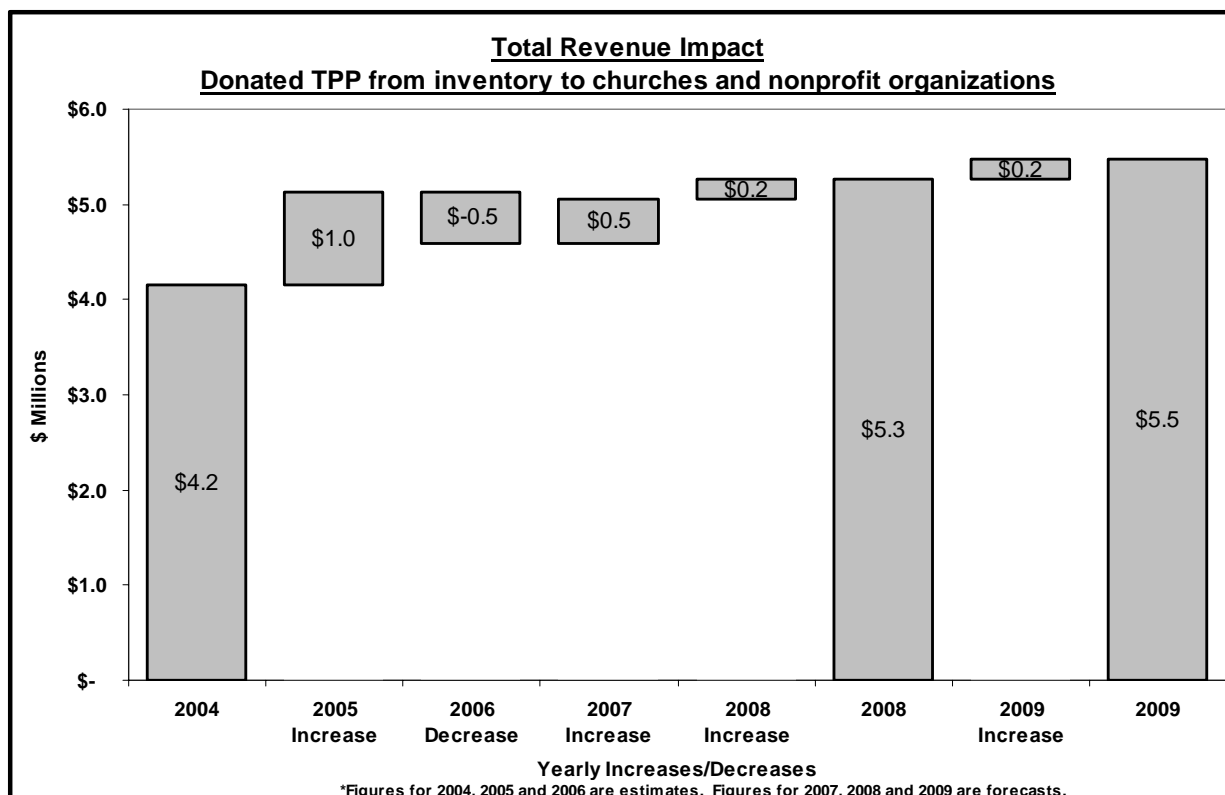
After applying the tax rates, TAX arrived at the expenditures presented in the table and graph below.

Table 1: Total State and Local Retail Sales and Use Tax Expenditure Resulting from Donations of Tangible Personal Property Withdrawn from Inventory to Nonprofit Organizations

<u>Fiscal Year</u>	<u>Revenue Impact from Food</u>	<u>Revenue Impact from Other Property</u>	<u>Total Revenue Impact</u>
2004	\$1,150,136	\$3,009,625	\$4,159,761
2005	\$1,286,117	\$3,836,554	\$5,122,672
2006	\$1,353,686	\$3,231,377	\$4,585,064
2007	\$1,466,864	\$3,580,937	\$5,047,801
2008	\$1,568,639*	\$3,691,813*	\$5,260,453*
2009	\$1,670,414*	\$3,802,689*	\$5,473,104*

* Projected using the CPI – U (September 2007)

Graph 1: Total State and Local Retail Sales and Use Tax Expenditure Resulting from Donations of Tangible Personal Property Withdrawn from Inventory to Nonprofit Organizations



BENEFICIARIES

Because the exemption applies to every transaction in the process, from manufacture to final disposition, every business that donates tangible personal property to a qualifying organization enjoys the exemption. Specifically, a business can donate tangible personal property and not be liable for the use tax upon removal of the item from inventory for personal use. Accordingly, there are a large number of wholesale and retail producers and merchandisers who may benefit from this exemption.

DIRECT OR INDIRECT GOVERNMENT ASSISTANCE

There is no apparent direct government assistance or subsidy that accrues to businesses that donate property to nonprofit organizations. In addition to the sales tax benefit, businesses that donate property are entitled to deduct such donations for federal and state income tax purposes. Generally, the amount that can be deducted is limited to the donor's basis in the property, but in some instances, businesses that donate property from inventory are entitled to deduct their basis in the donated property, plus one-half of the appreciated value of the property. Thus, it is possible for some businesses to receive an income tax deduction substantially greater than their basis in the property they donate.

STATE COMPARISONS

Of the 45 other sales tax jurisdictions:

- 22 provide a general exemption for donated property.
- 23 provide no general exemption.

The District of Columbia, Maryland, North Carolina and West Virginia provide the exemption, as does Virginia. Kentucky, North Carolina and Tennessee apply the tax to donated property. See Appendix 1 for a state-by-state listing of the tax treatment of donated property.

EXTERNAL MANDATES

There are no apparent state or federal constitutional or statutory mandates having an impact on this exemption.

OTHER STATE AND LOCAL TAX BURDENS

Generally, businesses are subject to Virginia state income taxes and to the Retail Sales and Use Tax on purchases of tangible personal property. They are also subject to local property taxes. Many localities impose the Merchants Capital Tax or the Business, Professional, Occupational and License (“BPOL”) Tax on businesses. Also, farmers donating agricultural products (gleaning) to organizations exempt from taxation pursuant to *IRC* § 501(c)(3) are entitled to a deduction from Virginia taxable income equal to the wholesale market value of the agricultural products contributed.

SIMILAR TAXPAYERS

Businesses that donate tangible personal property to organizations that are not exempt under *IRC* § 501(c)(3) or not the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof are not eligible for the exemption for items withdrawn from their inventories. Furthermore, the exemption does not apply to product samples or customer giveaways distributed for promotional purposes in the normal course of business operations.

EXEMPTION FOR NONPROFIT CHURCHES

AUTHORIZATION

The Retail Sales and Use Tax exemption for nonprofit churches is set forth in *Code of Va.* § 58.1-609.10(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 baptisteries; 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.

EXEMPTION SUMMARY

This provision exempts from the Retail Sales and Use Tax certain purchases of tangible personal property by nonprofit churches. In order to qualify for this exemption, a church must either be exempt from:

- Federal income taxation under *IRC* § 501(c)(3), or
- Local real property taxation under *Code of Va.* § 58.1-3606.

In addition, it must have a congregation or membership that meets at a single location for regularly scheduled worship services. The exemption extends to purchases by a nonprofit church of tangible personal property for:

- Use in religious worship services by a congregation or church membership while meeting together in a single location, and in the libraries, offices, meeting or counseling rooms, kitchens, 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 preschools, nurseries, and day care centers.
- Bulletins, programs, newspapers and newsletters which do not contain paid advertising and are used in carrying out the work of the church;
- Gifts 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 a nonprofit church or an organization composed of nonprofit churches which are used in carrying out the work of the church or churches;
- Property used for recording and reproducing services; 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.

In addition to using the self-issued Form ST-13A Certificate of Exemption authorized by *Code of Va. § 58.1-609.10(16)*, a nonprofit church may apply to TAX for the general Nonprofit Entity exemption authorized by *Code of Va. § 58.1-609.11*. This exemption is discussed in the next section titled "Nonprofit Entity Exemption."

RATIONALE

The Retail Sales and Use Tax exemption for nonprofit churches was originally enacted in 1979 by House Bill 556 (*Acts of Assembly 1979, Chapter 564*) with an effective date of January 1, 1980. As originally introduced in 1978, the legislation would have exempted virtually all tangible personal property purchased or sold by a church; however, the final legislation was significantly narrower in scope. The exemption was limited to tangible personal property used by a nonprofit church in its religious worship services or in its regular school of religious education.

Since its enactment, the exemption has been expanded on several occasions:

- House Bill 848 (*Acts of Assembly 1983, Chapter 557*) expanded the exemption to include all tangible personal property used in the rooms of public church buildings in carrying out the work of the church. This amendment effectively extended the exemption to property used in a church library, office, meeting or

counseling rooms, kitchen, and any other room 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, however, was limited to personal property used inside the buildings and did not include items used in the maintenance of church grounds, tool sheds or in parsonages.

- Senate Bill 192 (*Acts of Assembly 1986, Chapter 605*) expanded the exemption to baptisteries affixed to realty and select items for use outside the public buildings. Specifically, gifts for use outside the public church buildings, and purchases of bulletins, programs, newspapers, and newsletters for distribution outside the public church buildings were exempted. Prior to the expansion of the exemption to such items, purchases of printed materials for distribution outside the church when used inside the public church buildings were exempt yet those mailed to members or otherwise used outside the church buildings were taxable. Similarly, gifts for distribution inside church buildings were nontaxable yet gifts for distribution outside the church building were taxable. The expanded exemption for printed materials was applicable only to those materials used by a church itself. Such materials used by affiliated organizations, such as PACs and separately organized broadcasting ministries, remained taxable. Further, the exemption did not apply to printed materials that contain paid advertising.
- House Bill 1256 (*Acts of Assembly 1987, Chapter 541*) further expanded the exemption to include food, disposable serving items, cleaning supplies and teaching materials used in the operation of camps or conference centers by a church or an organization composed of churches, such as administrative or governing bodies. This exemption, however, was limited in that such items had to be used in carrying out the work of the church or churches in order to qualify for the exemption. Foods, disposable serving items, etc., used or consumed during a non-church function, thus were taxable.
- House Bill 1459 (*Acts of Assembly 1995, Chapter 617*) and House Bill 1512 (*Acts of Assembly 1995, Chapter 719*) clarified that purchases of food for distribution as gifts outside the public church building were exempt from the tax.
- House Bill 515 (*Acts of Assembly 2004, Chapter 515*) and Senate Bill 585 (*Acts of Assembly 2004, Chapter 536*) clarified that churches have two options to enjoy a Retail Sales and Use Tax exemption. They may continue using their self-issued exemption certificate, which will entitle them to the sales and use tax exemption available under the law as it existed on June 30, 2003, or they can apply for a general exemption certificate under the new process.
- House Bill 576 (*Acts of Assembly 2006, Chapter 338*) expanded the exemption to include tangible personal property used for recording and reproducing services.

- House Bill 2724 (*Acts of Assembly 2007, Chapter 758*) expanded the exemption to include tangible personal property used in carrying 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.

The exemption is limited to purchases by a nonprofit church that has a congregation or membership which meets at a single location for regularly scheduled worship services. Purchases by religious organizations, denominational governing bodies, and similar organizations generally are taxable. Only food, disposable serving items, etc., for use in carrying out the work of the church or churches, as explained above, may be purchased by such organizations exempt from the tax.

While purchases of tangible personal property by church members or other for donation to the church are subject to the Retail Sales and Use Tax, businesses may make tax free contributions of tangible personal property from their inventories to nonprofit churches pursuant to *Code of Va. § 58.1-609.10(15)*.

METHODOLOGY

In order to determine the cost of the Retail Sales and Use Tax exemption for Nonprofit churches, TAX reviewed data collected by its Nonprofit Exemption Unit and surveyed churches. As TAX has only recently asked churches seeking to download the self-issued Form ST-13A exemption certificate form from its website to volunteer their identity, TAX has little information about the number of churches that use the form and their purchases of tangible personal property.

- TAX surveyed a sample of the churches that had volunteered their identity to TAX when downloading the Form ST-13A exemption certificate form concerning their exempt purchases of tangible personal property. The sample response for this survey group was 131 out of 402 surveyed, for a response rate of 33%.
- To gain general data concerning purchases of tangible personal property by churches, TAX also reviewed purchasing data collected by its Nonprofit Exemption Unit from churches that use the new general Nonprofit Entity exemption. This data included the purchases of 718 churches over a three-year period.
- TAX also surveyed a sample of churches that had neither volunteered that they use the Form ST-13A exemption certificate nor had applied to TAX for a Nonprofit Entity Exemption certificate. According to the American Church List, <http://www.americanchurchlists.com>, there are 10,873 churches in Virginia. TAX conducted a survey of these churches using a mailing list of churches from www.churchangel.com. Additionally, TAX consulted phone directories to identify houses of worship for non-Christian faiths. The sample response for this survey

group totaled 116 out of 316 churches surveyed, a response rate of 37%. For the entire sample of churches surveyed, TAX received a 34% response rate.

In addition to the purchasing data, information was obtained regarding tangible personal property donated to churches. This information was used for purposes of TAX's analysis in the previous section regarding donated property.

The survey for the two church groups included identical questions. It asked the churches to select the size of their congregations from one of six numerical categories. These categories were determined by reviewing past research on churches and the research performed by the Barna Group. The categories were:

- Less than 50
- 50-100
- 101-200
- 201-300
- 301-499
- 500-999
- 1000 or more

TAX also asked the churches if they use the Form ST-13A, Certificate of Exemption when making purchases of tangible personal property. They were given two options, "yes" or "no". If they answered "yes", then they were asked to provide the amount of tangible personal property purchased using the Form in the last three years. If they answered "no" then they were told to skip to the next section of the survey. Some organizations provided exact figures while others could only give TAX estimates. Additionally, different time periods were supplied by each organization. For example, some churches provided annual data for 2003 to 2005 and others 2004 to 2006. Some churches use fiscal years and others used calendar years. Finally, TAX asked the churches to provide the amount of tangible personal property that was donated to them from business inventory for the past three years. During follow-up telephone calls, it was determined that some organizations had no information whether the items donated had come from business inventory.

REVENUE ANALYSIS

TAX's study showed that 2004 data collected from applications for the Nonprofit Entity Exemption was the least comprehensive due to the high volume of zeroes and low volume of total purchases. Therefore, TAX decided to eliminate this year from the analysis of churches that use the Nonprofit Entity Exemption process and use only the 2005-07 data to determine exempt purchases and make projections for 2008 and 2009.

As food is subject to the Retail Sales and Use Tax at a rate of 2 1/2% while other tangible personal property is subject to the tax at the rate of 5%, TAX determined the breakdown of donations to nonprofit organizations between food and all other property by contacting the churches with the 21 largest purchases from the sample to determine

a breakdown between food and other items, as well as to make sure that all purchases were made in Virginia. TAX adjusted the survey responses to reflect these interviews.

Finally, TAX determined the average purchase amounts for different size churches that use the Form ST-13A exemption.

The revenue analysis is divided into three parts:

- Total revenue impact from all churches.
- Revenue impact from churches that use the self-issued ST-13A exemption certificate. For the analysis of churches that use the ST-13A process, we also provide a description of purchasing practices for different size churches.
- Revenue impact from churches that have applied to TAX and obtained a Nonprofit Entity exemption certificate.

Table 1: Total State and Local Retail Sales and Use Tax Expenditure from All Churches.

<u>Fiscal Year</u>	<u>Revenue Impact</u>
2005	\$ 5,664,105
2006	\$ 6,257,191
2007	\$ 7,094,783
2008	\$ 7,871,248*
2009	\$ 8,647,713*

* Projected using the CPI – U (September 2007)

Graph 1: Total State and Local Retail Sales and Use Tax Expenditure from All Churches.

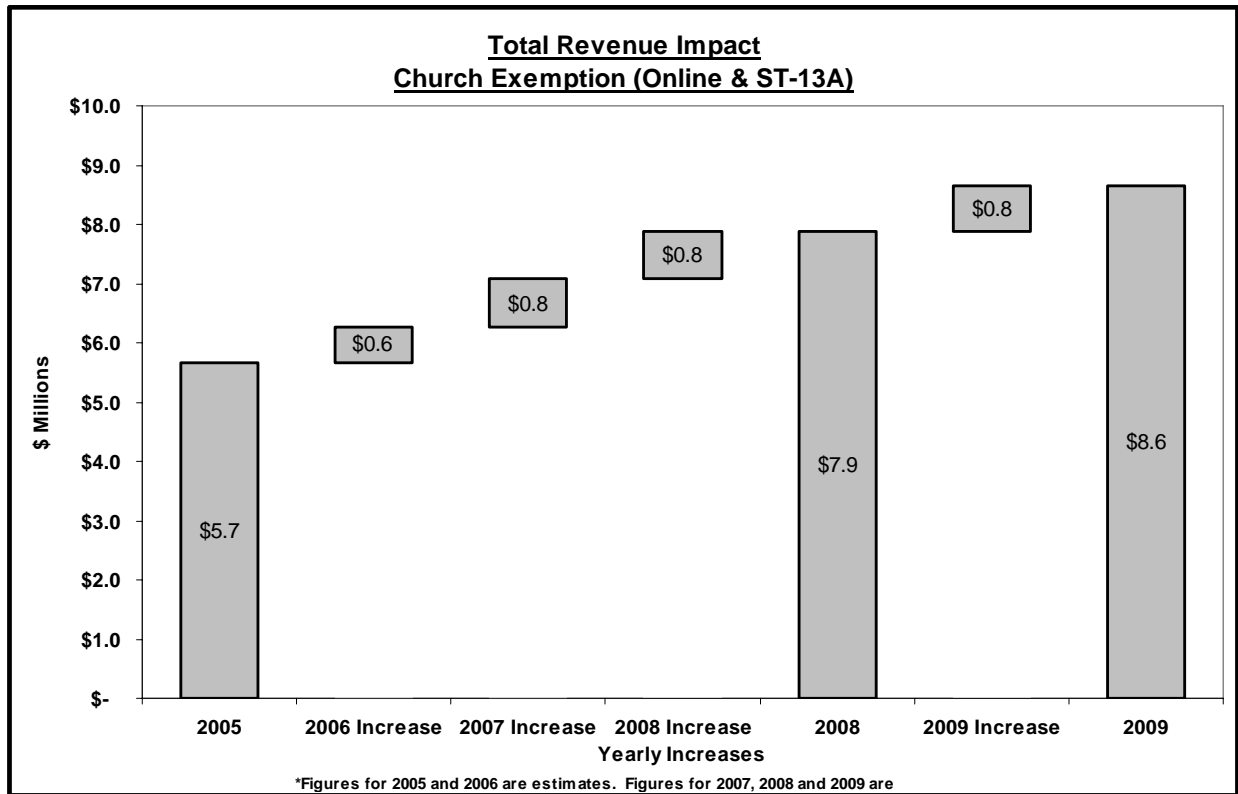


Table 2: Total State and Local Retail Sales and Use Tax Expenditure from Churches that Use the Self-Issued Form ST-13A Exemption Certificate.

<u>Fiscal Year</u>	<u>Revenue Impact</u>
2004	\$2,785,231
2005	\$3,653,195
2006	\$4,154,399
2007	\$4,900,110
2008	\$5,584,694*
2009	\$6,269,277*

* Projected using the CPI – U (September 2007)

Graph 2: Total State and Local Retail Sales and Use Tax Expenditure from Churches that Use the Self-Issued Form ST-13A Exemption Certificate.

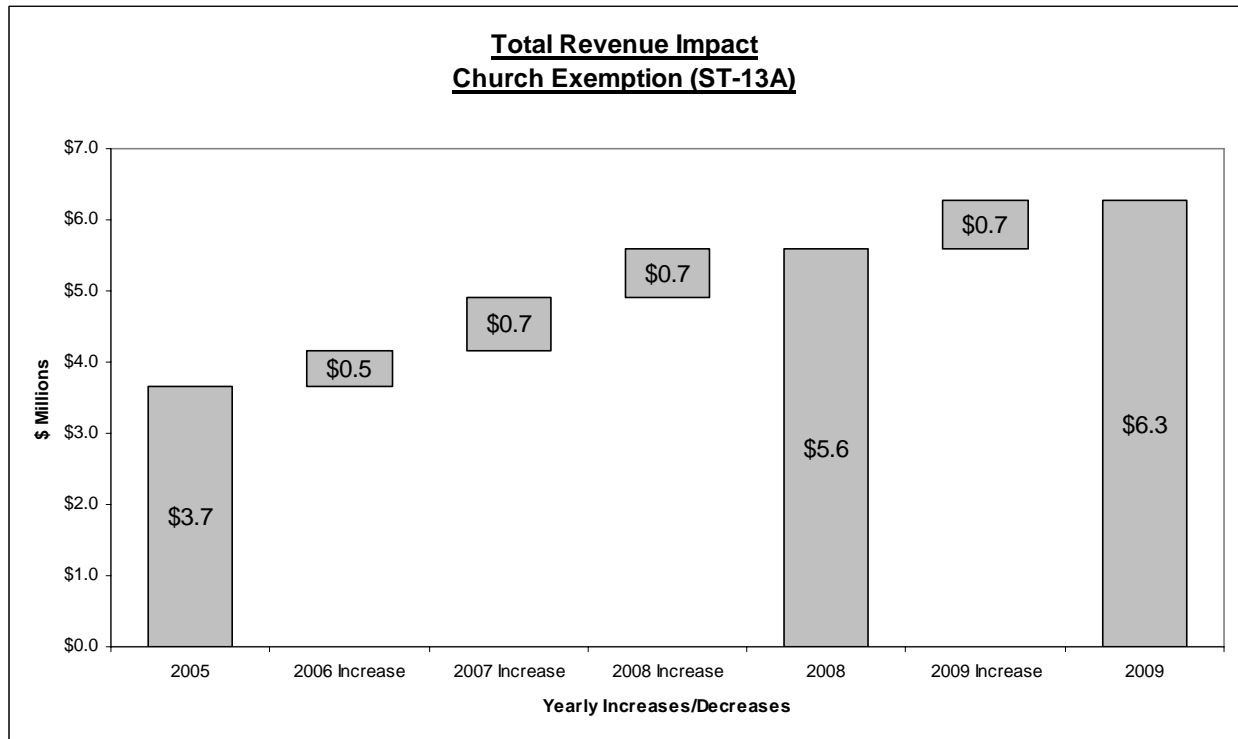


Table 3: Average Purchases Made by Different Size Churches

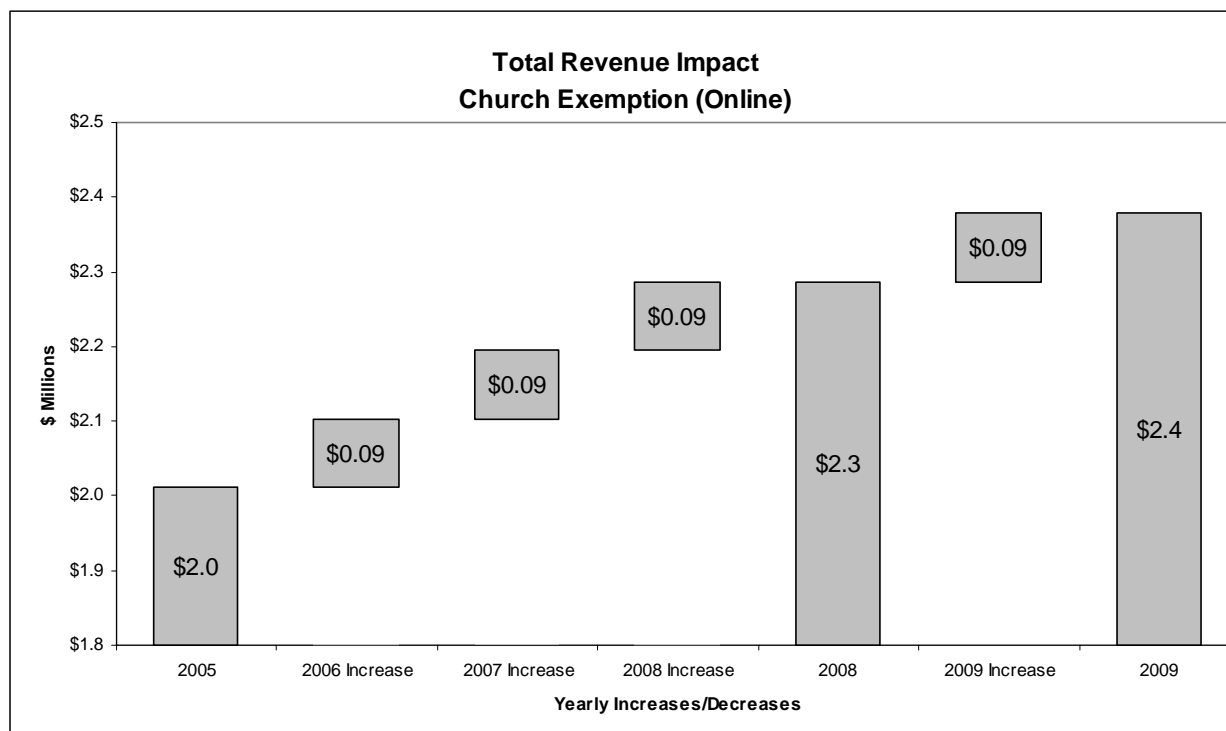
<u>Church Size</u>	<u>Average Purchases Fiscal Year 2004</u>	<u>Average Purchases Fiscal Year 2005</u>	<u>Average Purchases Fiscal Year 2006</u>
Less than 50	\$ 1,336	\$ 1,149	\$ 1,282
50-100	\$ 2,139	\$ 4,051	\$ 3,571
101-200	\$ 3,112	\$ 6,585	\$ 7,257
201-300	\$ 10,242	\$ 15,711	\$ 16,575
301-499	\$ 12,438	\$ 21,601	\$ 22,844
500-999	\$ 8,296	\$ 18,913	\$ 20,194
1000 or more	\$ 49,228	\$ 51,069	\$ 62,077

Table 4: Total State and Local Retail Sales and Use Tax Expenditure from Churches that Have Applied to TAX to Obtain a Nonprofit Entity Exemption Certificate.

<u>Fiscal Year</u>	<u>Revenue Impact</u>
2005	\$2,010,910
2006	\$2,102,791
2007	\$2,194,673
2008	\$2,286,554*
2009	\$2,378,435*

* Projected using the CPI – U (September 2007)

Graph 3: Total State and Local Retail Sales and Use Tax Expenditure from Churches that Have Applied to TAX to Obtain a Nonprofit Entity Exemption Certificate.



BENEFICIARIES

Beneficiaries of this exemption include churches that are exempt from taxation under *IRC* § 501(c)(3) or whose real property is exempt from local taxation pursuant to the provisions of *Code of Va.* § 58.1-3606 that have a congregation or membership that

meets at a single location for regularly scheduled worship services. In addition, to the extent that the churches are better able to meet the needs of their congregations and communities because of the existence of this exemption, the congregations and communities also benefit. Church administrative or governing bodies that operate camps or conference centers benefit from the exemption for food, disposable serving items, cleaning supplies and teaching materials used in the camps and centers provided the camp or center is being used for church functions.

DIRECT OR INDIRECT GOVERNMENT ASSISTANCE

To the extent that they are exempt from federal income taxation pursuant to *IRC* § 501(c)(3) and subsequently exempt from Virginia income taxation, nonprofit churches receive some indirect government assistance. They also benefit from their exemption from local property taxes.

Churches or religious bodies are exempt from local real and personal property taxes pursuant to Article X, Section 6 of the *Constitution of Virginia* and *Code of Va.* § 58.1-3606. The exemption extends to

[b]uildings with land they actually occupy, and the furniture and furnishings therein owned by churches or religious bodies, including an incorporated church or religious body, and exclusively occupied or used for religious worship or for the residence of the minister of any church or religious body, and such additional adjacent land reasonably necessary for the convenient use of any such building.

Nonprofit churches are also exempt from the motor vehicle sales and use tax pursuant to *Code of Va.* § 58.1-2403 for motor vehicles designed for the transportation of 10 or more passengers.

STATE COMPARISONS

Of the 45 other sales tax jurisdictions, 32 generally exempt purchases by churches and 13 generally tax such purchases. See Appendix 2 of this report for a state-by-state listing of the tax treatment for purchases of tangible personal property by churches.

Of Virginia's border jurisdictions, all but North Carolina generally exempt purchases by churches. North Carolina taxes all purchases by churches; however, it does allow churches to apply for a semiannual refund of all tax paid on direct and indirect purchases of building materials and contracting supplies. South Carolina's exemption extends to sales by such organizations if the net proceeds from the sales are used exclusively for exempt purposes.

EXTERNAL MANDATES

If churches choose not to use the self-issued exemption Form ST-13A, then they must apply to TAX in order to receive a Nonprofit Entity Retail Sales and Use Tax exemption under *Code of Va. § 58.1-609.11*.

The U.S. Constitution prohibits state-sanctioned religion and several court cases have addressed whether states' taxing laws are consistent with the constitutional anti-establishment clause. In *Jimmy Swaggart Ministries v. California*, 493 U.S. 378 (1990), the U.S. Supreme Court held that the imposition of a generally applicable sales tax on the distribution of religious materials by a religious organization does not violate the Religion Clauses of the First Amendment of the *U.S. Constitution*. The Court held in 1989 that a Texas sales tax exemption for all religious literature was unconstitutional because it violated the First Amendment, which guarantees freedom of the press in *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1998). The 4th U.S. Circuit Court of Appeals also held in *William Wallace Finalator et. al v. Powers*, 902 F.2d 1158 (4th Cir. 1990) that a North Carolina sales tax exemption for Bible purchases was discriminatory and violated the constitutional prohibition against state-established religion, particularly because the exemption specifically applied to the "Holy Bible."

OTHER STATE AND LOCAL TAX BURDENS

Nonprofit churches bear no state income tax burden unless they derive income from business activities unrelated to the purposes for which they received exemption from federal income taxation. Churches, however, are subject to income tax withholding and reporting requirements for their employees. In addition, they are subject to the sales and use tax on purchases of tangible personal property which do not fall within their exemption.

SIMILAR TAXPAYERS

Church-related organizations such as broadcasting ministries and denominational governing bodies generally are not eligible for the general exemption. However, as noted above, denominational governing bodies may be eligible for the portion of the exemption relating to camps and conference centers. Public and private church operated schools, including kindergartens, are eligible for exemption from the Retail Sales and Use Tax pursuant to *Code of Va. § 58.1-609.10(16)*.

NONPROFIT ENTITY EXEMPTION

AUTHORIZATION

Code of Va. § 58.1-609.11 provides a Retail Sales and Use Tax exemption for qualifying organizations:

A. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as such sections are in effect on June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow the procedures set forth in subsection B and meet the criteria set forth in subsection C. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C.

B. On and after July 1, 2004, in addition to the organizations described in subsection A, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

C. To qualify for the exemption under subsection B, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501 (c) (3) of the Internal Revenue Code or (ii) under § 501 (c) (4) of the Internal Revenue Code and, if it is exempt under § 501 (c) (4) of the Internal Revenue Code, it is organized for a charitable purpose; or
- b. The entity has annual gross receipts less than \$5,000, and the entity is organized for at least one of the purposes set forth in § 501 (c) (3) of the Internal Revenue Code, or one of the charitable purposes set forth in § 501 (c) (4) of the Internal Revenue Code; and
2. The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and
3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and
4. If the entity's gross annual revenue was \$1 million or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant. If the entity's gross annual revenue was between \$750,000 and \$1 million, then the entity must provide either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public accountant; and
5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and
6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:
 - a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and
 - b. The location where the financial records of the entity are available for public inspection.

D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

F. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

EXEMPTION SUMMARY

Prior to the 2003 General Assembly Session, 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 also qualify for the exemption.

With passage of House Bill 2525 (*Acts of the Assembly 2003, Chapter 757*), and Senate Bill 743 (*Acts of the Assembly 2003, Chapters 758*), 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, and in some cases

collecting, 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. Any organization that is exempt from federal income taxes under *IRC* § 501(c)(3) or *IRC* § 501(c)(4) provided they are organized for charitable purposes, is permitted to apply to TAX and qualify for this exemption. This broad exemption for nonprofit organizations, and eliminates the process of seeking an exemption through legislature. This exemption is acquired by applying to TAX for an exemption certificate, which is provided to dealers with whom the organization makes purchases.

RATIONALE

Over the years, there has been a marked increase in the number of entities seeking sales and use tax exemptions. 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.

House Bill 2525 (*Acts of the Assembly* 2003, Chapter 757), and Senate Bill 743 (*Acts of the Assembly* 2003, Chapters 758), based on recommendations made by the 2003 House Special Study Committee Studying Sales and Use Tax Exemptions, simplified the exemption process and enabled more charitable organizations to take advantage of the exemptions, and it created an administrative process to qualify nonprofit organizations for general sales and use tax exemptions. To be granted an exemption by TAX, an entity must meet all the applicable criteria:

- Exemption from federal income taxation under *IRC* § 501(c)(3); or under *IRC* § 501(c)(4) if organized for a charitable purpose; or if it has annual gross receipts less than \$5,000 and is organized for at least one of the purposes set forth in *IRC* § 501(c)(3) or one of the charitable purposes set forth in *IRC* § 501(c)(4).

- Compliance with all applicable state solicitation laws.
- Annual general administrative costs, including salaries and fundraising, relative to annual gross revenue not greater than 40 percent.
- If the entity's gross annual revenue was \$1 million or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant. If the entity's gross annual revenue was between \$750,000 and \$1 million, then the entity must provide either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public accountant.
- If the entity filed a federal 990 or 990 EZ tax form with the Internal Revenue Service, then it must provide a copy of such form to TAX.
- If the entity did not file a federal 990 or 990 EZ tax form with the Internal Revenue Service, then the entity must provide a list of the board of directors or other responsible agents of the entity and the location where the financial records of the entity are available for public inspection.

The process requires renewal on a five to seven-year cycle, but eliminated the need for legislative action. Entities holding valid exemption certificates under the old system will continue to enjoy their exempt status, but are required to file under the new process when their exemption sunsets. These grandfathered exemptions will expire and organizations will need to apply for a new exemption under the new process based on the following filing schedule:

<u>Exemption Group</u>	<u>Deadline</u>
Civic and community service (first half) (<i>Code of Va. § 58.1-609.8</i>)	July 1, 2004
Civic and community service (second half) (<i>Code of Va. § 58.1-609.8</i>)	July 1, 2005
Cultural and Miscellaneous (<i>Code of Va. §§ 58.1-609.9 and 58.1-609.10</i>)	July 1, 2006
Educational (<i>Code of Va. § 58.1-609.4</i>)	July 1, 2007
Medical-Related (<i>Code of Va. §58.1-609.7</i>)	July 1, 2008

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 *(c)(4)* status could obtain an exemption via the new process from July 1, 2004 through June 30, 2006. This bill also grandfathered the exemption from collecting sales tax on sales made at a fundraiser 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 if this information is available.

Beginning on July 1, 2004, nonprofit organizations were permitted to apply online for a this exemption via Nonprofit Online, a quick, efficient and secure Internet application

process developed by TAX for organizations to obtain a Virginia Sales and Use Tax exemption for the first time or renew their exemption certificate). Nonprofit Online also permits organizations to print out a Virginia sales and use certificate, edit certain registration information as it changes, as well as reprint lost certificates without having to contact TAX. Approximately 8,399 organizations have accessed the online application since the inception. TAX continues to receive high marks of 94% or higher from organizations that have submitted applications online and is very pleased to have made this convenient, easy-to-use service available to the nonprofit community.

House Bill 2100 (*Acts of Assembly 2005*, Chapters 42) and Senate Bill 1105 (*Acts of Assembly 2005*, Chapter 89) clarified that organizations holding a valid exemption as of June 30, 2003 would 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 will not qualify under the new process, as they have a federal designation of *IRC § 501(c)(19)*, and lost their grandfathered exemption June 30, 2006.

House Bill 5002 (*Acts of Assembly 2006*, Chapter 3, Special Session 1) and House Bill 5012 (*Acts of Assembly 2006*, Chapter 2, Special Session 1) modified the criteria that nonprofit entities must meet in order to qualify for sales and use tax exemption. Previously, one of the criteria required organizations with gross annual revenue 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 change 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 must be performed by an independent certified public accountant. Entities with more than \$500,000 of gross annual revenue are still required to provide a full audit performed by an independent certified public accountant. Entities with less than \$250,000 of gross annual revenue will continue to have no requirement to provide any type of financial audit or review.

METHODOLOGY

To study the revenue impact of the Nonprofit Entity exemption, TAX relied on the annual fiscal reports prepared by the Nonprofit Exemption Unit at TAX for presentation to the General Assembly for Fiscal Years 2004 through 2007. Each report examines the foregone revenue from purchases made by nonprofit organizations that renewed their exemption and by nonprofit organizations that applied for a new exemption during the prior fiscal year.

REVENUE ANALYSIS

The revenue analysis below is derived from estimates prepared by TAX's Nonprofit Exemption Unit for their annual fiscal impact analysis of nonprofit organizations. Each report examines the foregone revenue from purchases made by nonprofit organizations that renewed their exemption and nonprofit organizations that applied for a new exemption during the prior fiscal year.

Table 2 sets forth TAX's estimate of the total annual state and local Retail Sales and Use Tax revenue impact of the Nonprofit Entity Exemption. However, this estimate is preliminary and likely underestimates the expenditure due to purchases under the grandfathered exemption enjoyed by Medical-Related Organizations that were formerly allowed an exemption under *Code of Va. § 58.1-609.7*. As this grandfathered exemption does not expire until July 1, 2008, many of the organizations that enjoy this exemption have not yet applied for an exemption under the new process. Accordingly, TAX has little data concerning purchases made by these organizations. According to the 1990-1994 Virginia Sales and Use Tax Expenditure Study (Volume 1, Number 4) issued December 1992, the annual expenditure related to the Medical Related Organizations was \$49.2 million in 1992 (not adjusted for inflation). Once these organizations have applied for an exemption under the new process later this fiscal year, TAX will have sufficient data to make an estimate, which will be published in Volume 2 of the Virginia Retail Sales and Use Tax Expenditure Study on December 1, 2008.

Table 2: State and Local Retail Sales and Use Tax Expenditure Resulting from Purchases Made by Nonprofit Organizations that Renewed their Exemption and Nonprofit Organizations that Applied for a New Exemption During the Prior Fiscal Year.

<u>Fiscal Year</u>	<u>Revenue Impact</u>
2007	\$ 143,332,331
2008	\$ 146,703,204*
2009	\$ 149,231,359*

* Projected using the CPI – U (September 2007)

BENEFICIARIES

Any nonprofit organization exempt from taxation under *IRC* § 501(c)(3) or (c)(4), that applies to TAX and meets the mandatory criteria established in *Code of Va.* § 58.1-609.11.

DIRECT OR INDIRECT GOVERNMENT ASSISTANCE

To the extent that they are exempt from federal income taxation pursuant to *IRC* § 501(c)(3) or (c)(4) and subsequently exempt from Virginia income taxation, nonprofit organizations receive some indirect government assistance. Some organizations may also indirectly benefit from an exemption from local property taxes.

STATE COMPARISONS

A majority of states that impose a sales and use tax currently grant exemptions for purchases made by various nonprofit civic and community service type organizations. Some states provide an across-the-board exemption that generally exempts all religious, charitable, scientific, literary, educational or civic organizations, while others stipulate that the organizations must qualify for exemption from federal income taxation pursuant to *IRC* § 501(c)(3). A small number of states tax all nonprofit organizations. Still other states provide exemptions tailored to specific nonprofit organizations which meet certain statutory criteria, while others require the nonprofit to meet certain administrative requirements, such as being issued a specific exemption certificate or number from the state or receiving an exemption letter from the state. See Appendix 3 of this report for a complete list of sales and use tax exemption requirements for nonprofit organizations.

Virginia, Maryland, North Carolina, Tennessee and the District of Columbia each provide relief from the sales and use tax to qualifying nonprofit organizations on purchases of tangible personal property. However, the methods used by each state to implement this relief have some significant differences. Summarized below are the key aspects of the nonprofit sales tax exemption programs for Maryland, North Carolina, Tennessee, and the District of Columbia.

Maryland

The state of Maryland exempts purchases by certain nonprofit organizations from its sales and use tax. Maryland grants sales and use tax exemptions to classes of organizations rather than to specific organizations. Organizations that qualify for exemption must apply to the Maryland Comptroller for an exemption certificate before they may exercise the exemption. In determining whether or not an organization

qualifies for an exemption certificate as a nonprofit religious, charitable, or educational organization, possession of a current determination letter from the Internal Revenue Service that the organization qualifies for federal exemption under IRC § 501(c)(3) may be considered by the Comptroller as evidence that the organization qualifies for exemption from the retail sales and use taxes. The Comptroller also requires each organization to submit a copy of its articles of incorporation, bylaws and other organizational documents. The broadest classification of exempt nonprofit organizations consists of charitable, religious or educational organizations. Additionally, Maryland law specifies narrower classes of nonprofit organizations that may qualify for an exemption, such as churches, senior citizens' organizations, volunteer fire companies, ambulance companies and rescue squads.

Additionally, in order to qualify for an exemption, a charitable, religious or educational organization must be located in Maryland or an adjacent jurisdiction. If located in an adjacent jurisdiction, the organization qualifies for the exemption if it provides services within Maryland on a routine and regular basis or if the jurisdiction in which the organization is located (1) does not impose a sales or use tax on a sale to a non-profit organization made to carry on its work or (2) contains a reciprocal exemption from sales and use tax for sales to non-profit organizations located in adjacent jurisdictions. Currently, Maryland does not have reciprocity agreements with other states.

North Carolina

In order to exercise its exemption, a nonprofit organization must exhibit its exemption certificate to the vendor at the time of sale. The vendor must record the serial number of the exemption certificate on the record or evidence of each sale. Vendors may verify the organization's tax exemption number by telephoning the Comptroller or by accessing an online search function maintained by the Comptroller. Even though a nonprofit organization may be eligible for a refund of sales tax paid on its purchases, it must collect and remit the tax on its sales except in the following situations: sales of food are generally exempt when sold by school cafeterias; sales of food made by nonprofit church and religious organizations are exempt; annual fund-raising sales by nonprofit civic, charitable, educational, scientific, literary, or fraternal organizations are exempt if the sale proceeds are actually used to fund the organization's activities; and in addition, sales by a nonprofit civic, charitable, educational, scientific, or literary organizations are exempt if the net proceeds of those sales are given or contributed either directly or indirectly to the state of North Carolina.

North Carolina does not require that the nonprofit organization be located or provide services within North Carolina in order to participate in the refund program. In fact, qualifying organizations may apply to obtain refunds of sales tax paid during conventions and meetings held in North Carolina.

Organizations applying for a refund must be certified as qualifying nonprofit organizations by the North Carolina Department of Revenue. As an initial requirement, each nonprofit organization must provide documentation of its exemption from federal income taxation. However, the fact that an organization has been granted a federal or state income tax exemption does not mean that the organization will automatically qualify to participate in the refund process. The department requires each organization to furnish a copy of its articles of incorporation, bylaws and constitution. The department reviews the purposes of the organization, the organization's specific programs and activities, any charges made for the programs or activities, and who benefits from these programs and activities. The department also looks for provisions confirming that the organization is not operated for profit and provisions explaining how the organization's assets will be distributed in the event of dissolution. In questionable cases, the Department of Revenue will seek an Attorney General opinion.

A nonprofit organization may file a claim for a refund pending the department's determination. Once a determination is made that a nonprofit organization qualifies for a refund, the organization is issued an account number designated "refunds claims by nonprofit entities." The refund account number is issued even if the organization is already registered for the collection of sales and use tax. Once issued, the refund account number remains valid indefinitely unless the organization changes its activities or structure in such a way that it no longer qualifies for the refund process. North Carolina does not require nonprofit organizations to go through a periodic renewal or extension process.

Tennessee

The Tennessee exemption process is similar to that in Maryland. Purchases by charitable, educational and religious institutions are exempt from sales tax. Additionally, girls and boys clubs, volunteer fire departments and accredited senior citizen service centers are exempt from sales tax. Also, organizations that have received a determination of exemption from the IRS under *IRC* § 501(c)(3), (c)(4), (c)(5), (c)(13), or (c)(19) as charitable foundations, chartered wartime-era veterans' organizations, labor organizations, not-for-profit cemetery companies, or U.S. Armed Forces organizations qualify for an exemption certificate. Exemption certificates are issued by the Tax Commissioner and remain in effect perpetually, provided that the status and character of the holder of the exemption certificate do not change. Although churches may use their exemption certificates to purchase building materials for church construction tax free, no other organizations are entitled to this exemption.

District of Columbia

Sales to a semipublic institution are exempt from tax if the following conditions are met: the institution presents to the vendor a valid certificate of exemption; the vendor keeps a record of each sale, including the certificate number, the purchaser's name, and the

date and amount of the sale; the institution is located within the District and carries on its activities to a substantial extent within the District, resulting in substantial benefits to District citizens; and the property or services purchased are for use or consumption in operating the institution for the purpose for which it was organized or for honoring the institution or its members.

“Semipublic institution” means any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. The institution must obtain a certificate of exemption from the Director of the Department of Finance and Revenue stating that the institution is entitled to the exemption. An exemption certificate remains in effect until it is recalled by the District of Columbia.

EXTERNAL MANDATES

There are no apparent state or federal constitutional or statutory mandates having an impact on this exemption.

OTHER STATE AND LOCAL TAX BURDENS

Organizations that meet the statutory requirements bear no state income tax burden unless they derive income from business activities unrelated to the purposes for which they received exemption from federal income taxation. Organizations are subject to income tax withholding and reporting requirements for their employees. In addition, they are subject to the sales and use tax on purchases of tangible personal property that do not fall within their exemption.

SIMILAR TAXPAYERS

As it is necessary for each organization to apply to TAX to enjoy this exemption, while exempt from federal income taxes under *IRC* § 501(c)(3) or (c)(4), a similar organization may be prohibited from enjoying the exemption because it has not applied to TAX for an exemption certificate or fails any of the requirements imposed by *Code of Va.* § 58.1-609.11. Also, nonprofit organizations qualifying for federal income tax exemption under the provisions of *IRC* § 501(c) other than (c)(3) or (c)(4) are generally not eligible for a Retail Sales and Use Tax exemption.

APPENDIX 1

EXEMPTIONS BY STATE FOR DONATED TANGIBLE PERSONAL PROPERTY
WITHDRAWN FROM INVENTORY

State	General Exemption	Comments
Alabama	Yes	As long as the aggregate retail value of a gift or gifts is equal to or less than \$10,000.
Arizona	No	There are exceptions for prepared food, drink, or condiments that are donated to IRC § 501(c) (3) organizations to help feed the needy.
Arkansas	No	
California	No	California does provide a use tax exemption for property, including motor vehicles, donated to organizations described in IRC § 170(b)(1)(A), which include public or government entities such as churches or associations of churches; educational organizations; medical organizations; and certain private foundations.
Colorado	No	Only manufactured property that is stored, used, or consumed donated by the manufacturer to various governmental and non-profit entities is exempt from the use tax, as long as the aggregate value of all the goods of a single donation exceeds \$1,000.
Connecticut	Yes	Items purchased by a retailer for resale and donated from inventory to an IRC § 501(c)(3) exempt organization are exempt from use tax.
District of Columbia	Yes	
Florida	No	If the donor of tangible personal property paid on any tax due as the consumer of the property, donations to any person, religious, educational, or charitable institutions are exempt.
Georgia	No	
Hawaii	Yes	
Idaho	No	Donations to food banks or soup kitchens of food or other tangible personal property, excluding motor vehicles or trailers.
Illinois	Yes	
Indiana	No	
Iowa	No	
Kansas	No	
Kentucky	No	
Louisiana	No	
Maine	No	
Maryland	Yes	
Massachusetts	Yes	
Michigan	Yes	
Minnesota	No	
Mississippi	No	
Missouri	No	
Nebraska	No	
Nevada	Yes	Donations of property to religious or charitable organizations are exempt from sales tax as long as such donations do not benefit the donee financially.
New Jersey	No	
New Mexico	Yes	
New York	Yes	Donations of property produced by a manufacturer are exempt.
North Carolina	Yes	
North Dakota	Yes	
Ohio	Yes	
Oklahoma	Yes	Donated tangible personal property is taxable provided it is donated from a business's inventory.

Pennsylvania	No	
Rhode Island	No	
South Carolina	No	
South Dakota	Yes	
Tennessee	No	
Texas	Yes	
Utah	Yes	
Vermont	Yes	Donations of tangible personal property withdrawn from inventory are exempt provided the entity is qualified for exemption under IRC § 501(c)(3).
Virginia	Yes	Tax does not apply to tangible personal property withdrawn from inventory and donated to (i) an organization exempt from taxation under IRC § 501(c)(3) or (ii) Virginia, any political subdivision of Virginia, or any Virginia school, agency, or instrumentality.
Washington	Yes	Contributions and donations are tax deductible.
West Virginia	Yes	
Wisconsin	Yes	
Wyoming	No	

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

APPENDIX 2

CHURCH EXEMPTIONS BY STATE

State	General Exemption	Qualifications for Exemption	Exemption
Alabama	No		Charitable and nonprofit organizations do not enjoy from a general exemption from sales and use taxes. The sale of hymn books, bibles and other religious material to religious organizations and churches are subject to sales and use tax.
Arizona	No	Exempt from federal income tax under IRC § 501(c)(3); File with the Department of Revenue requesting tax-exempt status and include a copy of its IRS recognition as a nonprofit charitable organization.	Charitable and nonprofit organizations do not enjoy from a general exemption from sales and use taxes. Provides an exemption for specific organizations.
Arkansas	No		Charitable and nonprofit organizations do not enjoy from a general exemption from sales and use taxes. Provides an exemption for specific organizations.
California	No		Charitable and nonprofit organizations do not enjoy from a general exemption from sales and use taxes. Sales of meals may be exempt if the money collected is used to support the regular functions of the church.
Colorado	Yes	Exempt from federal income tax under IRC § Sec. 501(c)(3);	Sales made to charitable organizations in the conduct of their regular charitable functions and activities are exempt from the sales tax.
Connecticut	Yes	File with the Department of Revenue requesting tax-exempt status and include a copy of its IRS recognition as a nonprofit charitable organization.	Sales of tangible personal property or services to charitable and religious organizations are exempt from sales or use tax. The burden is on the seller to prove the exemption by providing a copy of the certificate.
District of Columbia	Yes	Exempt if they fall under IRC § Sec. 501(c)(3);	
Florida	Yes	Exempt from federal income tax under IRC § Sec. 501(c)(3); Issued an exemption certificate by the Department of Revenue that is valid for five years.	Sales or leases of tangible personal property, including motor vehicles, for use in carrying out the activities of the church.

State	General Exemption	Qualifications for Exemption	Exemption
Georgia	No		Churches are generally not exempt from sales and use taxes on their purchases.
Hawaii	No	Because the general excise tax is imposed on the seller rather than the buyer, sales to churches are generally subject to tax. Exempt from federal income tax under IRC § 501(c)(3); Issued an exemption certificate by the Department of Revenue.	
Idaho	No	No general exemption from tax is provided to religious organizations.	
Illinois	Yes	Issued an exemption identification number by the Department of Revenue.	Only for purchases for use by the church.
Indiana	Yes	Exempt from federal income tax under Internal under IRC § 501(c)(3); Promotes social welfare.	Sales or leases of tangible personal property for the purposes of carrying out the activities of the church.
Iowa	Yes	Exempt from federal income tax under Internal under IRC § 501(c)(3).	Sales or leases of tangible personal property for the purposes of carrying out the activities of the church.
Kansas	Yes	Exempt from federal income tax under IRC § 501(c)(3).	Sales or leases of tangible personal property for the purposes of carrying out the activities of the church. Purchases by a contractor for the purpose of constructing and repairing a church facility.
Kentucky	Yes	Exempt from federal income tax under IRC § 501(c)(3).	Tax does not apply to sales of tangible personal property or services to such institutions provided the property or service is to be used solely within the educational, charitable, or religious function.
Louisiana	No		No general exemption from tax is provided to religious organizations.
Maine	Yes	Must be chartered by the Legislature and be awarded an exemption certificate.	Sales of tangible personal property for the purposes of carrying out the activities of the church.
Maryland	Yes	Issued an exemption identification number by the Comptroller that expires every five years and must be renewed.	Sales of tangible personal property for the purposes of carrying out the activities of the church; The burden is on the seller to prove the exemption by providing a copy of the certificate.

State	General Exemption	Qualifications for Exemption	Exemption
Massachusetts	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption identification number by the Commissioner of Revenue that expires every ten years and must be renewed.	Sales of tangible personal property for the purposes of carrying out the activities of the church
Michigan	Yes	Exempt from federal income tax under IRC § 501(c)(3).	Buses and vans with a seating capacity of 10+ and used for carrying out the activities of the church.
Minnesota	Yes	Exempt from federal income tax under IRC § 501(c)(3).	
Mississippi	No		The storage or consumption of literature and audio visual devices used to dissemination religious information in carrying out the work of the church is exempt from use tax. Tangible personal property purchased and first used in another state by a church for carrying out the activities of the church.
Missouri	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption certificate number by the Department of Revenue. In order to receive an exemption certificate the church must provide the following information: an application for exemption; copy of articles of incorporation and/or bylaws; copy of tax exemption letter from the IRS; copy of tax exemption from the county assessing officer; financial history for prior three years; copy of nonprofit certificate, registration, or charter; and other documents the Department of Revenue may request.	
Nebraska	Yes	Issued an exemption identification number by the Commissioner of Revenue; Must present the exemption certificate to the seller.	Sales of tangible personal property for the purposes of carrying out the activities of the church; The exemption does not include the sale of motor vehicles, trailers, semi-trailers or motorboats.
Nevada	Yes	Issued an exemption identification number by the Department of Taxation.	

State	General Exemption	Qualifications for Exemption	Exemption
New Jersey	Yes	Exempt from federal income tax under IRC § 501(c)(3). Must apply to the State Sales Tax Bureau for the exemption; The exemption is valid unless there are changes to the character, purpose, or organization of the church, whereby the organization must reapply with the department.	Sales and use taxes do not apply to sales, service, or amusement charges by or to any religious organization.
New Mexico	Yes	Exempt from federal income tax under IRC § 501(c)(3).	
New York	Yes	Exempt from federal income tax under IRC § 501(c)(3).	The exemption applies to the rental of amusement property. Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting, adding to, repairing, and maintaining altering, improving, maintaining, real property is exempt from the tax. Bibles and other religious publications are taxable.
North Carolina	No		Churches generally must pay tax on both their purchases and sales. Churches may apply for a semiannual refund of tax paid on direct and indirect purchases of building materials and contracting supplies. Sales of food to religious organizations are exempt. Bibles and other religious publications are taxable.
North Dakota	No		The regular sales made by a religious organization are taxable.
Ohio	Yes	Exempt from federal income tax under IRC § 501(c)(3).	Sales and use taxes do not apply to sales and services to any religious organization. Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting, adding to, repairing, and maintaining altering, improving, maintaining, real property is exempt from the tax.
Oklahoma	Yes	Exempt from federal income tax under IRC § 501(c)(3). Must provide proof of its membership status to the Oklahoma Tax Commission.	Churches may purchase any tangible personal property exempt from sales and use tax. Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting, adding to, repairing, and maintaining altering, improving, maintaining, real property is exempt from the tax.
Pennsylvania	Yes	Must receive an exemption form the legislature.	Includes purchases of Bibles, religious publications, and religious articles provided the religious organization holds an exemption number.
Rhode Island	Yes	Issued an exemption identification number by the Tax Administrator.	

State	General Exemption	Qualifications for Exemption	Exemption
South Carolina	No	Exempt from federal income tax under IRC § 501(c)(3). Has the option to be issued an exemption identification number by the Department of Revenue;	For each musical instrument or office equipment there is a maximum tax of \$300, provided the instrument or equipment is located on church property and used to carry out the work of the church.
South Dakota	No		Sales to religious organizations of property for consumption or use are not exempt from the sales or use tax.
Tennessee	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption identification number by the Department of Revenue.	Sales and use taxes do not apply to sales and services to any religious organization.
Texas	Yes	Exempt from federal income tax under IRC § 501(c)(3). Must submit to the Comptroller a written statement, of its activities and supporting documentation, and a copy of the ruling letter from the IRS.	In general, sales to religious organizations of property for consumption or use are exempt from the sales or use tax.
Utah	Yes	Exempt from federal income tax under IRC § 501(c)(3). Must be approved by the Tax Commission.	Sales of tangible personal property for the purposes of carrying out the activities of the church; For sales of at least \$1,000, the exemption will be at the point of sale, and for sales less than \$1,000 the exemption will be in the form of a refund. Churches may apply to the Tax Commissioner for a refund of sales and use tax on a monthly basis.
Vermont	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption certificate from the Tax Commissioner.	
Virginia	Yes	Exempt from federal income tax under IRC § 501(c)(3) or whose real property is exempt from local taxation pursuant to Code of Va. § 58.1-3606. Churches may use the self-issued exemption certificate Form ST-13A.	Tax does not apply to tangible personal property purchased by churches for use in religious worship services; 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; reproducing religious services; maintaining the property and public church buildings.

State	General Exemption	Qualifications for Exemption	Exemption
Washington	No		
West Virginia	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption certificate from the Tax Commissioner.	Sales of tangible personal property for the purposes of carrying out the activities of the church, excluding gasoline or special fuel.
Wisconsin	Yes	Exempt from federal income tax under IRC § 501(c)(3).	Sales of tangible personal property and services for the purposes of carrying out the activities of the religious organization.
Wyoming	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption approval by the Department of Revenue that is valid for three years and must be renewed.	Sales of tangible personal property for the purposes of carrying out the activities of the religious organization. Contractors performing work for a religious organization is subject to sales and use tax on all equipment, and materials purchased by the contractor.

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

APPENDIX 3

**SALES AND USE TAX EXEMPTION FOR NONPROFIT ORGANIZATIONS
BY STATE**

State	General Exemption	Qualifications	Exemption(s)	EDUCATION EXEMPTION
Alabama	No		There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption.	
Arizona	No	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption certificate by the Department of Revenue.	There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption. An organization that provides food to persons for a nominal charge or without a monetary charge can purchase food tax exempt.	
Arkansas	No		There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax unless granted a specific exemption. Nonprofit organizations can receive refunds as an incentive to locate in the state provided the organization spends \$500,000 or more on real property and capital, complies with a financial incentive agreement, and receives an endorsement from the locality in which it located.	
California	No	Exempt from federal income tax under IRC § 501(c)(3). Exempt from California property taxation under the "welfare exemption."	There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption.	

State	General Exemption	Qualifications	Exemption(s)	EDUCATION EXEMPTION
Colorado	Yes	Exempt from federal income tax IRC § 501(c)(3). Department of Revenue may conduct an independent review to determine an organization's charitable status.	The sale, storage, use, consumption, or loan of tangible personal property to charitable or nonprofit organizations to be used to carry out their activities is exempt from the use tax. Cash purchases are exempt provided the charitable organization satisfies the following conditions: the purchaser shows a copy of the exemption certificate when the purchase is made or the purchaser has a copy of its exemption certificate on file with the vendor; the purchaser signs an affidavit declaring that the purchase is paid for using organization funds; and the purchase does not exceed \$100.	
Connecticut	Yes	Exempt from federal income tax under IRC § 501(c)(3). Must show proof of eligibility for the exemption to the Commissioner of Revenue.	The sale of tangible personal property to charitable or nonprofit organizations to be used to carry out their activities is exempt from the use tax. The burden is on the seller to prove the exemption by providing a copy of the certificate.	There is an exemption for organizations with an educational purpose.
District of Columbia	Yes	Exempt if they fall under IRC § 501(c)(3). Is a U.S. state or territory and promotes social welfare.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the use tax.	
Florida	No	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption certificate by the Department of Revenue that is valid for five years.	There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption. The sale of tangible personal property to charitable or nonprofit organizations to be used to carry out their activities is exempt from the use tax. The exemption is applied to motor vehicles.	
Georgia	No		There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption.	

State	General Exemption	Qualifications	Exemption(s)	EDUCATION EXEMPTION
Hawaii	No	Because the general excise tax is imposed on the seller rather than the buyer, sales to nonprofit organizations are generally subject to tax. Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption certificate by the Department of Revenue.	There is no general exemption for nonprofit or charitable organizations. The exemption applies only to persons that register with the Department of Taxation and pay a \$20 fee; activities that do not benefit individual members; and activities that do not result in financial gain.	
Idaho	No		There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption. The following are exempt from sales and use taxes: hospitals, health-related entities, educational institutions, environmental organizations, independent living centers, volunteer fire departments, licensed emergency medical service agencies, the Blind Services Foundation, qualifying senior citizen centers, nonprofit organizations offering free dental clinic services to children, and food banks or soup kitchens (excluding motor vehicles or trailers).	
Illinois	Yes	Issued an exemption identification number by the Department of Revenue.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the use tax.	
Indiana	Yes	Exempt from federal income tax under IRC § 501(c)(3). Promotes social welfare.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the use tax.	Educational institutions exempt from tax, but not the sale of books, stationery, haberdashery, supplies, or other property by a college or university.
Iowa	Yes	Exempt from federal income tax under IRC § 501(c)(3).	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the use tax.	A nonprofit private educational institution is exempt from retail sales and use tax provided the proceeds from its sales are for educational, religious, or charitable purposes.
Kansas	No	Exempt from federal income tax under IRC § 501(c)(3).	There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption.	

State	General Exemption	Qualifications	Exemption(s)	EDUCATION EXEMPTION
Kentucky	Yes	Exempt from federal income tax under IRC § 501(c)(3).	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the use tax.	Educational exemptions include sales of food to students in school cafeterias or lunchrooms; sales by school bookstores of textbooks, workbooks, and other course materials; sales by nonprofit school-sponsored clubs and organizations, but not athletic events.
Louisiana	No	Exempt from federal income tax under IRC § 501(c)(3).	There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption.	
Maine	No	Must be chartered by the Legislature and be awarded an exemption certificate.	There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption.	
Maryland	Yes	Issued an exemption identification number by the Comptroller that expires every five years and must be renewed.	The sale of tangible personal property or services to charitable or nonprofit organizations or volunteer fire company or department, to be used to carry out their activities, is exempt from the use tax.	There is an exemption for organizations with an educational purpose.
Massachusetts	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption identification number by the Commissioner of Revenue that expires every ten years and must be renewed.		
Michigan	Yes	Exempt from federal income tax under IRC § 501(c)(3).	Nonprofit organizations, educational institutions, and churches are entitled to certain sales and use tax exemptions.	There is an exemption for organizations with an educational purpose.
Minnesota	Yes	Exempt from federal income tax under IRC § 501(c)(3).	The broadest of the exemptions for exempt organizations is that for property purchased by nonprofit organizations that is used for the charitable, religious, or educational purpose.	There is an exemption for organizations with an educational purpose.

State	General Exemption	Qualifications	Exemption(s)	EDUCATION EXEMPTION
Mississippi	No		There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations must pay sales or use tax on purchases unless granted a specific exemption.	
Missouri	Yes	Exempt from federal income tax under Internal Revenue Code Sec. 501(c)(3). Issued an exemption certificate number by the Department of Revenue. In order to receive an exemption certificate the church must provide the following information: an application for exemption; copy of articles of incorporation and/or bylaws; copy of tax exemption letter from the IRS; copy of tax exemption from the county assessing officer; financial history for prior three years; copy of nonprofit certificate, registration, or charter; and other documents the Department of Revenue may request.		There is an exemption for organizations with an educational purpose.
Nebraska	Yes	Issued an exemption identification number by the Commissioner of Revenue; Must present the exemption certificate to the seller.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the sales and use tax. The exemption does not include the sale of motor vehicles, trailers, semi-trailers or motorboats.	There is an exemption for organizations with an educational purpose.
Nevada	Yes	Issued an exemption identification number by the Department of Taxation.		

State	General Exemption	Qualifications	Exemption(s)	EDUCATION EXEMPTION
New Jersey	Yes	Exempt from federal income tax under Internal Revenue Code Sec. 501(c)(3); Must apply to the State Sales Tax Bureau for the exemption; The exemption is valid unless there are changes to the character, purpose, or organization of the organization, whereby the organization must reapply with the department.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the sales and use tax.	There is an exemption for organizations with an educational purpose.
New Mexico	Yes	Exempt from federal income tax under IRC § 501(c)(3).	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the sales and use tax.	
New York	Yes	Exempt from federal income tax under IRC § 501(c)(3).	The exemption applies to the rental of amusement property. Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting, adding to, repairing, and maintaining altering, improving, maintaining, real property is exempt from the tax. Bibles and other religious publications are taxable.	
North Carolina	No		There is no general exemption for nonprofit or charitable organizations. Charitable or nonprofit organizations under certain circumstances may apply for refunds of tax paid on their purchases.	
North Dakota	No		There is no general exemption for nonprofit or charitable organizations.	
Ohio	Yes	Exempt from federal income tax under IRC § 501(c)(3).	Sales and use taxes do not apply to sales and services to any nonprofit organization. Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting, adding to, repairing, and maintaining altering, improving, maintaining, real property is exempt from the tax.	
Oklahoma	Yes	Exempt from federal income tax under IRC § 501(c)(3). Must provide proof of its membership status to the Oklahoma Tax	Sales and use taxes do not apply to sales and services to any nonprofit organization. Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting, adding to, repairing, and maintaining altering,	There is an exemption for organizations with an educational purpose.

State	General Exemption	Qualifications	Exemption(s)	EDUCATION EXEMPTION
		Commission.	improving, maintaining, real property is exempt from the tax.	
Pennsylvania	Yes	Must receive an exemption form the legislature.	The sale of tangible personal property or services to charitable or nonprofit organizations, volunteer fire companies, educational institutions and religious organizations, to be used to carry out their activities, is exempt from the sales and use tax.	
Rhode Island	Yes	Issued an exemption identification number by the Tax Administrator.		There is an exemption for organizations with an educational purpose.
South Carolina	No	Exempt from federal income tax under IRC § 501(c)(3). Has the option to be issued an exemption identification number by the Department of Revenue.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the sales and use tax. If they receive the exemption, the organization is also exempt from the retail license tax.	
South Dakota	No		There is no general exemption for nonprofit or charitable organizations.	
Tennessee	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption identification number by the Department of Revenue.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used to carry out their activities is exempt from the sales and use tax.	
Texas	Yes	Exempt from federal income tax under IRC § 501(c)(3). Must submit to the Comptroller a written statement, of its activities and supporting documentation, and a copy of the ruling letter from the IRS.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used in carrying out their activities is exempt from the sales and use tax.	There is an exemption for organizations with an educational purpose.
Utah	Yes	Exempt from federal income tax under IRC § 501(c)(3). Must be approved by the Tax Commission.	Sales of tangible personal property for the purposes of carrying out the activities of the church; For sales of at least \$1,000, the exemption will be at the point of sale, and for sales less than \$1,000 the exemption will be in the form of a refund. Nonprofit organizations may apply to the Tax Commissioner for a refund of sales and use tax on a monthly basis.	

State	General Exemption	Qualifications	Exemption(s)	EDUCATION EXEMPTION
Vermont	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption certificate from the Tax Commissioner.		There is an exemption for organizations with an educational purpose.
Virginia	Yes	Exempt from federal income tax under Internal Revenue Code Sec. 501(c)(3) or whose real property is exempt from local taxation pursuant to Sec. 58.1-3606 of the Code of VA.; Issued an exemption certificate from the Department of Taxation.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used in carrying out their activities is exempt from the sales and use tax.	There is an exemption for organizations with an educational purpose.
Washington	No		There is no general exemption for nonprofit or charitable organizations.	
West Virginia	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption certificate from the Tax Commissioner.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used in carrying out their activities is exempt from the sales and use tax, excluding gasoline or special fuel.	
Wisconsin	Yes	Exempt from federal income tax under IRC § 501(c)(3).	The sale of tangible personal property or services to charitable or nonprofit organizations to be used in carrying out their activities is exempt from the sales and use tax.	
Wyoming	Yes	Exempt from federal income tax under IRC § 501(c)(3). Issued an exemption approval by the Department of Revenue that is valid for three years and must be renewed.	The sale of tangible personal property or services to charitable or nonprofit organizations to be used in carrying out their activities is exempt from the sales and use tax. Contractors performing work for a religious organization is subject to sales and use tax on all equipment, and materials purchased by the contractor.	

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

Code of Va. § 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.

Code of Va. § 58.1-609.11. Exemptions for nonprofit entities.

A. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as such sections are in effect on June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow the procedures set forth in subsection B and meet the criteria set forth in subsection C. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C.

B. On and after July 1, 2004, in addition to the organizations described in subsection A, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

C. To qualify for the exemption under subsection B, a nonprofit entity must meet the applicable criteria under this subsection as follows:

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1. a. The entity is exempt from federal income taxation (i) under § 501 (c) (3) of the Internal Revenue Code or (ii) under § 501 (c) (4) of the Internal Revenue Code and, if it is exempt under § 501 (c) (4) of the Internal Revenue Code, it is organized for a charitable purpose; or

b. The entity has annual gross receipts less than \$5,000, and the entity is organized for at least one of the purposes set forth in § 501 (c) (3) of the Internal Revenue Code, or one of the charitable purposes set forth in § 501 (c) (4) of the Internal Revenue Code; and
 2. The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and
 3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and
 4. If the entity's gross annual revenue was \$1 million or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant. If the entity's gross annual revenue was between \$750,000 and \$1 million, then the entity must provide either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public accountant; and
 5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and
 6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:
 - a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and
 - b. The location where the financial records of the entity are available for public inspection.
- D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If

the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

F. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

G. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

H. The Department of Taxation shall file an annual report no later than December 1, 2004, and December 1 of each succeeding year with the Chairman of the House Finance Committee, the Chairman of the House Appropriations Committee, and the Chairman of the Senate Finance Committee, setting forth the annual fiscal impact of the sales and use tax exemptions for nonprofit entities.

Code of Va. § 58.1-609.12. Reports to General Assembly on tax exemptions studies.

A. The Tax Commissioner shall determine the fiscal, economic and policy impact of each sales and use tax exemption set out in §§ 58.1-609.10 and 58.1-609.11 and report such findings to the chairmen of the House and Senate Finance Committees no later than December 1 of each year. The first such report shall be due December 1, 2007. Subgroups of the exemptions shall be reviewed in periodic cycles and reports issued on a rotating basis in accordance with a schedule determined by the Tax Commissioner. When such reports have been completed for each subgroup of the sales and use tax exemptions, the Tax Commissioner shall repeat the process beginning with the subgroup of exemptions for which a report was made in 2007. No exemption shall be analyzed under the provisions of this section more frequently than once every five years.

B. When the Tax Commissioner investigates and analyzes the tax exemptions in § 58.1-609.10, the following information shall be considered and included in the report:

1. Estimate of foregone state and local revenues as a direct result of the exemption;
2. Beneficiaries of the exemption;
3. Direct or indirect local, state, or federal government assistance received by the persons or entities granted the exemption, to the extent such information is reasonably available;
4. The extent to which the comparable person, entity, property, service, or industry is exempt from the retail sales and use tax in other states, particularly states contiguous to the Commonwealth;
5. Any external statutory, constitutional, or judicial mandates supporting the exemption;
6. Other Virginia taxes to which the person, entity, property, service, or industry is subject;
7. Similar taxpayers who are not entitled to a retail sales and use tax exemption; and
8. Other criteria, facts or circumstances that may be relevant to the exemption.

C. When the Tax Commissioner investigates and analyzes the tax exemptions in § 58.1-609.11, in addition to the information required by subsection H of § 58.1-609.11, he shall report on the extent to which the person, entity, property, service, or industry is

exempt from the retail sales and use tax in other states, particularly states contiguous to the Commonwealth.

D. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required to be reported under this section. (2005, c. 853; 2006, c. 559.)

SURVEY INSTRUMENT (CHURCHES)

1. Please provide the name of your organization, mailing address, and a contact name, telephone number, and email address on the lines provided below.

2. What is the size of your congregation? Put an "X" next to the appropriate range.

less than 50 50 – 100 101 – 200 201 – 300
 301 – 499 500 – 999 1000 or more

3. Do you use the Form ST-13A, Certificate of Exemption when making purchases of tangible personal property? (If no, please leave question #4 blank and go directly to question #5.)

Yes _____ No _____

4. Please provide the total amount of tangible personal property your organization purchased using Form ST-13A in each of the past three (3) years, if available. (Do not include such items as salaries and fringe benefits, mortgage or rent payments, interest expense, depreciation, utilities, insurance or professional services.) *Please provide an estimate if you do not have the exact number.*

Year	Purchase
_____	_____
_____	_____
_____	_____

5. Please provide the total value of tangible personal property donated to your church or place of worship from a business's inventory for the past three (3) years, if available. (Examples of donated tangible personal property include grocery items, clothing, building supplies, vehicles, and furniture.) *Please provide an estimate if you do not have the exact number.*

Year	Purchase
_____	_____
_____	_____
_____	_____

Items purchased using Form ST-13A

TAX defines *tangible personal property* as: “property that can be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses.” (23 VAC 10-210-5030)

Tangible personal property that may be purchased by qualifying churches exempt from the Sales and Use Tax using Form ST-13A includes:

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. (Code of Virginia 58.1-609.10(16))

Other more specific examples include, but are not limited to, such property as:

Acolyte robes; Altar cushions and cloths; Baptism, marriage, and membership certificates; Baptismal font; Bibles and Bible stands; Bulletins or programs (including paper and ink used to print these); Candles and candelabra used at the location of the worship service; Choir robes; Communion supplies and tables; Flags used at the location of the worship service; Flowers and plants, live or artificial, and accessories thereto used at the location of the worship service; Funeral pall; Hymnals and hymnal racks; Light bulbs used at the location of the worship service; Microphones and public address system used in the worship service except when incorporated into realty; Musical instruments used in the worship service (e.g., organ, piano, hand bells); Name tags for ushers and guests, and attendance records; Offering envelopes; Pews, cushions, chairs or other seating systems; Portable heaters and fans and window air conditioners used at the location of the worship service; Prayer books; Pulpit, lectern, pulpit lamp; Rosaries, crosses, crucifixes; Carpeting used at the location of the worship services (except glued-down carpeting); Sheet music; Systems to assist persons who are hearing-impaired; Tallithim; Torahs; Vestments for ecclesiastical celebrants; Wafers, bread, wine, grape juice used in communion service; Yarmulkes (23 VAC 10-210-310)

Effective July 1, 2006, tangible personal property used in recoding and reproducing services may also be purchased exempt of the Sales and Use Tax using the Form ST-13A.

Effective July 1, 2007, tangible personal property, such as mowing equipment and building materials, that are used to maintain property owned by a church or place of worship may also be purchased exempt of the Sales and Use Tax using the Form ST-13A.

**SURVEY INSTRUMENT
DONATED TANGIBLE PERSONAL PROPERTY WITHDRAWN FROM INVENTORY**

1. Please provide the name of your organization, mailing address, and a contact name, telephone number, and email address on the lines provided below.

2. Under which section of the Internal Revenue Code does your organization qualify for federal income tax exemption?

_____ 501(c)(3)

_____ 501(c)(4)

_____ Other

3. Please provide an estimate of the total value of tangible personal property donated to your organization in the past three available (3) years.

Year

Definition of Tangible Personal Property

Tangible personal property is defined as: “property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. The term tangible personal property shall not include stocks, bonds, notes, insurance or other obligations or securities...” Code of Va. § 58.1-602

For purposes of this survey, tangible personal property does not include motor vehicles, real estate, utilities or services.