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HOUSE BILL NO. 2440

Offered January 10, 2001

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A BILL to amend and reenact §§ 58.1-602 and 58.1-609.3 of the Code of Virginia, relating to sales tax exemptions.

Patron—Harris

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-602 and 58.1-609.3 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-602. Definitions.**

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program, or computer network.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or § 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into this Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from this Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

59 "Internet service" means a service that enables users to access proprietary and other content,
60 information electronic mail, and the Internet as part of a package of services sold to end-user
61 subscribers.

62 "Lease or rental" means the leasing or renting of tangible personal property and the possession or use
63 thereof by the lessee or renter for a consideration, without transfer of the title to such property.

64 "Licensing" means entering into a contract that authorizes access to, or use, distribution,
65 performance, modification, or reproduction of, information or informational rights, but expressly limits
66 the access or uses authorized or expressly grants fewer than all rights in the information, whether or
67 not the transferee has title to a licensed copy.

68 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting
69 with the handling and storage of raw materials at the plant site and continuing through the last step of
70 production where the product is finished or completed for sale and conveyed to a warehouse at the
71 production site, and also includes equipment and supplies used for production line testing and quality
72 control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and
73 magazine printing when such activities are performed by the publisher of any newspaper or magazine
74 for sale daily or regularly at average intervals not exceeding three months.

75 The determination whether any manufacturing, mining, processing, refining or conversion activity is
76 industrial in nature shall be made without regard to plant size, existence or size of finished product
77 inventory, degree of mechanization, amount of capital investment, number of employees or other factors
78 relating principally to the size of the business. Further, "industrial in nature" shall include, but not be
79 limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the
80 Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

81 "Modular building" means, but shall not be limited to, single and multifamily houses, apartment
82 units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are
83 intended to become real property, primarily constructed at a location other than the permanent site, built
84 to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the
85 Virginia Department of Housing and Community Development, and shipped with most permanent
86 components in place to the site of final assembly. For purposes of this chapter, a modular building shall
87 not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and
88 certified under the provisions of the National Manufactured Housing Construction and Safety Standards
89 Act of 1974 (42 U.S.C. § 5401 et seq.).

90 "Modular building manufacturer" means a person or corporation who owns or operates a
91 manufacturing facility and is engaged in the fabrication, construction and assembling of building
92 supplies and materials into modular buildings, as defined in this section, at a location other than at the
93 site where the modular building will be assembled on the permanent foundation and may or may not be
94 engaged in the process of affixing the modules to the foundation at the permanent site.

95 "Modular building retailer" means any person who purchases or acquires a modular building from a
96 modular building manufacturer, or from another person, for subsequent sale to a customer residing
97 within or outside of the Commonwealth, with or without installation of the modular building to the
98 foundation at the permanent site.

99 "Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of
100 the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all
101 applicable motor vehicle sales and use taxes have been paid.

102 "Occasional sale" means a sale of tangible personal property not held or used by a seller in the
103 course of an activity for which he is required to hold a certificate of registration, including the sale or
104 exchange of all or substantially all the assets of any business and the reorganization or liquidation of
105 any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in
106 number, scope and character to constitute an activity requiring the holding of a certificate of registration.

107 "Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for
108 purposes of this chapter only, shall also include Internet service regardless of whether the provider of
109 such service is also a telephone common carrier.

110 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,
111 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,
112 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body
113 politic or political subdivision, whether public or private, or quasi-public, and the plural of such term
114 shall mean the same as the singular.

115 "Prewritten program" means a computer program that is prepared, held or existing for general or
116 repeated sale or lease, including a computer program developed for in-house use and subsequently sold
117 or leased to unrelated third parties.

118 "Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in
119 the form of tangible personal property or services taxable under this chapter, and shall include any such
120 transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale

must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than ninety continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; and (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with this Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in this Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price, or (iii) separately stated local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in this Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal 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.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein

182 defined.

183 "Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to
184 those activities which are an integral part of the production of a product, including all steps of an
185 integrated manufacturing or mining process, but not including ancillary activities such as general
186 maintenance or administration. When used in relation to mining, it shall refer to the activities specified
187 above, and in addition, any reclamation activity of the land previously mined by the mining company
188 required by state or federal law.

189 "Video programmer" means a person or entity that provides video programming to end-user
190 subscribers.

191 "Video programming" means video and/or information programming provided by or generally
192 considered comparable to programming provided by a cable operator including, but not limited to,
193 Internet service.

194 § 58.1-609.3. Commercial and industrial exemptions.

195 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606
196 shall not apply to the following:

197 1. Personal property purchased by a contractor which is used solely in another state or in a foreign
198 country, which could be purchased by such contractor for such use free from sales tax in such other
199 state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or
200 country.

201 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of
202 tangible personal property *or into computer software*, for resale *or licensing* where such industrial
203 materials either enter into the production of or become a component part of the finished product; (ii)
204 industrial materials that are coated upon or impregnated into the product at any stage of its being
205 processed, manufactured, refined, or converted for resale *or licensing*; (iii) machinery or tools or repair
206 parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing,
207 manufacturing, refining, mining or converting products for sale, ~~or~~ resale, *or licensing*; (iv) materials,
208 containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal
209 property *or computer software* for shipment, ~~or~~ sale, *or licensing*; or (v) equipment, printing or supplies
210 used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately
211 sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts
212 therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in
213 processing, manufacturing, refining, mining or converting products for sale, ~~or~~ resale, *or licensing*. The
214 provisions of this subsection do not apply to the drilling, extraction, refining, or processing of oil, gas,
215 natural gas and coalbed methane gas.

216 3. Tangible personal property sold or leased to (i) a public service corporation subject to a state
217 franchise or license tax upon gross receipts, (ii) a telecommunications company as defined in
218 § 58.1-400.1 or (iii) a telephone company chartered in the Commonwealth which is exclusively a local
219 mutual association and is not designated to accumulate profits for the benefit of, or to pay dividends to,
220 the stockholders or members thereof, for use or consumption by such corporation, company, person or
221 mutual association directly in the rendition of its public service; and tangible personal property sold or
222 leased to a public service corporation engaged in business as a common carrier of property or
223 passengers by motor vehicle or railway, for use or consumption by such common carrier directly in the
224 rendition of its public service.

225 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in
226 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying
227 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states
228 of the United States or its territories or possessions, or in foreign commerce between ports in the
229 Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or
230 tangible personal property used directly in the building, conversion or repair of the ships or vessels
231 covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant
232 vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used
233 exclusively or principally in interstate or foreign commerce.

234 5. Tangible personal property purchased for use or consumption directly and exclusively in basic
235 research or research and development in the experimental or laboratory sense.

236 6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign
237 commerce as a common carrier providing scheduled air service on a continuing basis to one or more
238 Virginia airports at least one day per week, for use or consumption by such airline directly in the
239 rendition of its common carrier service.

240 7. Meals furnished by restaurants or food service operators to employees as a part of wages.

241 8. Tangible personal property including machinery and tools, repair parts or replacements thereof,
242 and supplies and materials used directly in maintaining and preparing textile products for rental or
243 leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile

products.

9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660 and (ii) effective retroactive to July 1, 1994, and through June 30, 2001, certified pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas production, including gas, natural gas, and coalbed methane gas.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption directly in the rendition of their services.

11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or photocopying of products for sale or resale.

12. From July 1, 1994, through June 30, 2001, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, refining, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," "refining," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

13. From July 1, 1997, through June 30, 2001, (i) the sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind possessing space flight capability, including the components thereof, irrespective of whether such facility, system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal property placed on or used aboard any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and services provided to operate and maintain launch facilities, launch equipment, payload processing facilities and payload processing equipment used to conduct spaceport activities.

For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

The exemptions provided by this subdivision shall not be denied by reason of a failure, postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or any components thereof.