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HOUSE BILL NO. 1878

Offered January 12, 2005

Prefiled January 7, 2005

A BILL to amend and reenact §§ 58.1-625 and 58.1-626 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-611.2, relating to a limited sales and use tax exemption for school-related items.

Patrons—McDougle, Athey and Sherwood

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-625 and 58.1-626 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 58.1-611.2 as follows:

§ 58.1-611.2. Limited exemption for certain school-related items.

Beginning in 2005, for a seven-day period that begins each year on the Monday 14 days before the first Monday in September and ends at midnight on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or § 58.1-606 shall not apply to (i) school supplies, or clothing and footwear designed to be worn on or about the human body, provided that the selling price of each article is \$100 or less; (ii) computer systems, provided that the selling price of each system is \$1,500 or less; or (iii) computers, computer hardware, computer software, or portable or hand-held calculators, provided that the selling price of each item is \$500 or less. Any discount, coupon or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption. Notwithstanding the foregoing, this exemption shall not apply to any purchase made in a theme park.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make the guidelines available, both electronically and in hard copy, no later than August 1 of each year.

§ 58.1-625. Collection of tax.

The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

Notwithstanding the foregoing provisions of this section, beginning in 2005 during the period of time set forth in § 58.1-611.2, any dealer is authorized not to collect the tax levied by this chapter from the purchaser and to absorb the tax himself. A dealer electing to absorb the taxes shall be liable for payment of the taxes to the Tax Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

§ 58.1-626. Absorption of tax prohibited.

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of such tax. Any person who violates this section shall be guilty of a Class 2

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59 misdemeanor. *Beginning in 2005, the prohibitions contained in this section shall not apply during the*
60 *time period set out in § 58.1-611.2 or during the 14 days immediately preceding the time period for*
61 *advertisements relating to sales to be made during the time period set out in § 58.1-611.2.*