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SENATE BILL NO. 571

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 14, 2006)

(Patron Prior to Substitute—Senator McDougle)

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 supplies, clothing, and footwear.

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 supplies, clothing, and footwear.*

Beginning in 2006, for a three-day period that begins each year on the first Friday in August and ends at midnight on the first Sunday in August, the tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 shall not apply to certain (i) school supplies including, but not limited to, dictionaries, notebooks, pens, pencils, notebook paper, and calculators, and (ii) clothing and footwear designed to be worn on or about the human body. The tax exemption shall apply to each article of school supplies with a selling price of \$20 or less, and each article of clothing or footwear with a selling price of \$100 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.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 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, any dealer is authorized during the period of time set forth in § 58.1-611.2 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such 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 misdemeanor. *The prohibitions contained in this section shall not apply during the time period set out in § 58.1-611.2 or during the 14 days immediately preceding such time period for advertisements relating to sales to be made during the time period set out in § 58.1-611.2.*