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SENATE BILL NO. 73

Offered January 11, 2006

Prefiled January 6, 2006

A BILL to amend and reenact §§ 58.1-609.2 and 58.1-609.10 of the Code of Virginia, relating to sales and use tax exemption for medicines and drugs used for agricultural production animals or agricultural production.

Patron—Houck

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.2 and 58.1-609.10 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-609.2. Agricultural 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. Commercial feeds; seeds; plants; fertilizers; liming materials; breeding and other livestock; semen; breeding fees; baby chicks; turkey poults; rabbits; quail; llamas; bees; agricultural chemicals; fuel for drying or curing crops; baler twine; containers for fruit and vegetables; farm machinery; medicines and drugs sold to a veterinarian provided they are used or consumed directly in the care, medication, and treatment of agricultural production animals or for resale to a farmer for direct use in producing an agricultural product for market; tangible personal property, except for structural construction materials to be affixed to real property owned or leased by a farmer, necessary for use in agricultural production for market and sold to or purchased by a farmer or contractor; and agricultural supplies provided the same are sold to and purchased by farmers for use in agricultural production, which also includes beekeeping and fish, quail, rabbit and worm farming for market.

2. Every agricultural commodity or kind of seafood sold or distributed by any person to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or consumption in the process of preparing, finishing, or manufacturing such agricultural or seafood commodity for the ultimate retail consumer trade, except when such agricultural or seafood commodity is actually sold or distributed as a marketable or finished product to the ultimate consumer. "Agricultural commodity," for the purposes of this subdivision, means horticultural, poultry, and farm products, livestock and livestock products, and products derived from bees and beekeeping.

3. Livestock and livestock products, poultry and poultry products, and farm and agricultural products, when produced by the farmer and used or consumed by him and the members of his family.

4. Machinery, tools, equipment, materials or repair parts therefor or replacement thereof; fuel or supplies; and fishing boats, marine engines installed thereon or outboard motors used thereon, and all replacement or repair parts in connection therewith; provided the same are sold to and purchased by watermen for use by them in extracting fish, bivalves or crustaceans from waters for commercial purposes.

5. Machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy or supplies, and cereal grains and other feed ingredients, including, but not limited to, drugs, vitamins, minerals, nonprotein nitrogen, and other supplements or additives, used directly in making feed for sale or resale. Making of feed shall include the mixing of liquid ingredients.

6. Machinery or tools and repair parts therefor or replacements thereof, fuel, power, energy or supplies, used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold. Harvesting of forest products shall include all operations prior to the transport of the harvested product necessary for (i) removing timber or other forest products from the harvesting site, (ii) complying with environmental protection and safety requirements applicable to the harvesting of forest products, (iii) obtaining access to the harvesting site, and (iv) loading cut timber or other forest products onto highway vehicles for transportation to storage or processing facilities.

§ 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

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59 purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil.
60 Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any
61 portion of such purchase for domestic use may, between the first day of the first month and the fifteenth
62 day of the fourth month following the year of purchase, apply for a refund of the tax paid on the
63 domestic use portion.

64 2. An occasional sale, as defined in § 58.1-602.

65 3. Tangible personal property for future use by a person for taxable lease or rental as an established
66 business or part of an established business, or incidental or germane to such business, including a
67 simultaneous purchase and taxable leaseback.

68 4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside
69 of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be
70 deemed to be delivery of goods for use or consumption outside of the Commonwealth.

71 5. Tangible personal property purchased with food coupons issued by the United States Department
72 of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special
73 Supplemental Food Program for Women, Infants, and Children.

74 6. Tangible personal property purchased for use or consumption in the performance of maintenance
75 and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the
76 Commonwealth.

77 7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised,
78 edited, reformatted or copied documents, including but not limited to documents stored on or transmitted
79 by electronic media, to its client or to third parties in the course of the professional's rendition of
80 services to its clientele.

81 8. School lunches sold and served to pupils and employees of schools and subsidized by government;
82 school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use
83 by students attending a nonprofit college or other institution of learning, when sold (i) by such
84 institution of learning or (ii) by any other dealer, when such textbooks have been certified by a
85 department or instructor of such institution of learning as required textbooks for students attending
86 courses at such institution.

87 9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases,
88 and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or
89 other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed
90 free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed
91 physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and
92 fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by
93 a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his
94 professional practice, regardless of whether such practice is organized as a sole proprietorship,
95 partnership, or professional corporation, or any other type of corporation in which the shareholders and
96 operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician
97 assistants engaged in the practice of medicine, optometry, or nursing, but excluding nursing homes,
98 clinics, and similar corporations not otherwise exempt under this section; medicines and drugs purchased
99 for use or consumption by a licensed hospital; and samples of prescription drugs and medicines and
100 their packaging distributed free of charge to authorized recipients in accordance with the federal Food,
101 Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). ~~Any~~ *With the exceptions of those*
102 *medicines and drugs used for agricultural production animals that are exempt to veterinarians under*
103 *subdivision 1 of § 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription*
104 *shall be deemed to be the user or consumer of all such medicines and drugs.*

105 10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances,
106 catheters, urinary accessories, other durable medical equipment and devices, and related parts and
107 supplies specifically designed for those products; and insulin and insulin syringes, and equipment,
108 devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when
109 such items or parts are purchased by or on behalf of an individual for use by such individual. Durable
110 medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily
111 used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or
112 injury, and (iv) is appropriate for use in the home.

113 11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

114 12. Special equipment installed on a motor vehicle when purchased by a handicapped person to
115 enable such person to operate the motor vehicle.

116 13. Special typewriters and computers and related parts and supplies specifically designed for those
117 products used by handicapped persons to communicate when such equipment is prescribed by a licensed
118 physician.

119 14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation,
120 treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and

121 proprietary medicines distributed free of charge by the manufacturer, including packaging materials and
122 constituent elements and ingredients.

123 b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to
124 regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision
125 shall not apply to cosmetics.

126 15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt
127 from taxation under § 501 (c) (3) of the Internal Revenue Code or (ii) the Commonwealth, any political
128 subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

129 16. Tangible personal property, except property used in any form for recording and reproducing
130 services, purchased by nonprofit churches that are exempt from taxation under § 501 (c) (3) of the
131 Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions
132 of § 58.1-3606, for use (i) in religious worship services by a congregation or church membership while
133 meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or
134 other rooms in the public church buildings used in carrying out the work of the church and its related
135 ministries, including kindergarten, elementary and secondary schools. The exemption for such churches
136 shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid
137 advertising and are used in carrying out the work of the church; gifts including food for distribution
138 outside the public church building; and food, disposable serving items, cleaning supplies and teaching
139 materials used in the operation of camps or conference centers by the church or an organization
140 composed of churches that are exempt under this subdivision and which are used in carrying out the
141 work of the church or churches.

142 17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings,
143 incontinence products and wound-care products, when purchased by a Medicaid recipient through a
144 Department of Medical Assistance Services provider agreement.