

082536548

HOUSE BILL NO. 1246

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact § 58.1-610 of the Code of Virginia, relating to sales and use tax; modification of the taxability of certain transactions by government contractors.

Patrons—Hugo, Athey, Cole, Lingamfelter and Sherwood

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-610 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-610. Contractors.

A. Any person who contracts orally, in writing, or by purchase order, to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon, and in connection therewith to furnish tangible personal property, shall be deemed to have purchased such tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for such person shall be obligated to collect the tax to the extent required by this chapter.

B. Any person who contracts to perform services in this Commonwealth and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property becomes vested in the contractor. This subsection, however, shall not apply to the industrial materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6; the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth in subdivision 1 of § 58.1-609.2; or the exclusion for baptisteries set forth in former subdivision 2 of § 58.1-609.8.

C. For contractors' work orders, statements of work, and task orders, entered into on and after July 1, 2006, with the United States, the Commonwealth, or any political subdivision or instrumentality thereof, the Department of Taxation shall make a taxability determination regarding the true object of the transaction, according to the general principles of true object as set forth in the Virginia Administrative Code § 10-210-4040, based upon the true object of each separate work order, statement of work, and task order, rather than the true object of the underlying contract between the government entity and such contractor. Nothing in this subsection shall be construed to extend an exemption to materials, equipment, or other tangible personal property purchased by a contractor for use in real estate construction contracts with a governmental entity.

D. Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipment rental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

E. Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section. Any person selling fences, venetian blinds, window shades, awnings, storm windows and doors, locks and locking devices, floor coverings (as distinguished from the floors themselves), cabinets, kitchen equipment, window air conditioning units or other like or comparable items, shall be deemed to be a retailer of such items and not a using or consuming contractor with respect to them, whether he sells to and installs such items for contractors or other customers and whether or not such retailer fabricates such items.

F. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in this chapter, or the industrial materials and other industrial exclusions set out in § 58.1-609.3, the exclusion for baptisteries set out in former subdivision 2 of § 58.1-609.8, or the partial exclusion for the sale of modular buildings as set out in § 58.1-610.1, or (ii) impose any sales or use tax with respect to the use in the performance of contracts with the United States, this Commonwealth, or any political

INTRODUCED

HB1246

59 subdivision thereof, of tangible personal property owned by a governmental body which actually is not
60 used or consumed in the performance thereof.

61 FG. Notwithstanding the other provisions of this section, any person engaged in the business of
62 furnishing and installing locks and locking devices shall be deemed a retailer of such items and not a
63 using or consuming contractor with respect to them.