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HOUSE BILL NO. 1298

Offered January 21, 2010

A *BILL to amend and reenact § 58.1-609.10 of the Code of Virginia, relating to sales and use tax exemption; computer equipment.*

Patrons—Crockett-Stark and Nutter

Unanimous consent to introduce

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-609.10 of the Code of Virginia is amended and reenacted as follows:**

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

2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of 4) (i) food, prepared food and meals and 2) (ii) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on less fewer than 24 occasions in a calendar year.

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

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

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

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

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

8. (Effective until July 1, 2010) School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a nonprofit college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

8. (Effective July 1, 2010) School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases,

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59 and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or
60 other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed
61 free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed
62 physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and
63 fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by
64 a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his
65 professional practice, regardless of whether such practice is organized as a sole proprietorship,
66 partnership, or professional corporation, or any other type of corporation in which the shareholders and
67 operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician
68 assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for
69 use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise
70 exempt under this section; and samples of prescription drugs and medicines and their packaging
71 distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and
72 Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and
73 drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of
74 § 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed
75 to be the user or consumer of all such medicines and drugs.

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

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

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

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

90 14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation,
91 treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and
92 proprietary medicines distributed free of charge by the manufacturer, including packaging materials and
93 constituent elements and ingredients.

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

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

100 16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under
101 § 501(c)(3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant
102 to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church
103 membership while meeting together in a single location and (ii) in the libraries, offices, meeting or
104 counseling rooms or other rooms in the public church buildings used in carrying out the work of the
105 church and its related ministries, including kindergarten, elementary and secondary schools. The
106 exemption for such churches shall also include baptistries; bulletins, programs, newspapers and
107 newsletters that do not contain paid advertising and are used in carrying out the work of the church;
108 gifts including food for distribution outside the public church building; food, disposable serving items,
109 cleaning supplies and teaching materials used in the operation of camps or conference centers by the
110 church or an organization composed of churches that are exempt under this subdivision and which are
111 used in carrying out the work of the church or churches; and property used in caring for or maintaining
112 property owned by the church including, but not limited to, mowing equipment; and building materials
113 installed by the church, and for which the church does not contract with a person or entity to have
114 installed, in the public church buildings used in carrying out the work of the church and its related
115 ministries, including, but not limited to worship services; administrative rooms; and kindergarten,
116 elementary, and secondary schools.

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

120 18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an

individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and olive pits.

19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

20. Beginning July 1, 2010, and ending June 30, 2020, computer equipment purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, provided that such computer equipment is purchased or leased for use in a data center that (a) is located in a Virginia locality, (b) results in a new capital investment on or after July 1, 2009, of at least \$150 million, and (c) results in the creation on or after July 1, 2009, of at least 50 new jobs associated with the operation or maintenance of the data center provided that such jobs pay at least one and one half times the prevailing average wage in that locality. *The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone.* Prior to claiming such exemption, any qualifying person claiming the exemption must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investments made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying person claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment purchased or leased to upgrade, supplement, or replace computer equipment purchased or leased in the initial investment. The exemption shall not apply to any computer software otherwise taxable under Chapter 6 of Title 58.1, Code of Virginia (§ 58.1-600 et seq.) that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or fixtures.