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SENATE BILL NO. 660

Offered January 21, 2010

A *BILL to amend and reenact § 58.1-612 of the Code of Virginia, relating to sufficient activity within the Commonwealth to require a dealer to register for retail sales and use tax purposes.*

Patron—Hanger

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-612 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.

A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons who are dealers, as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under subsections B and C hereof.

B. The term "dealer," as used in this chapter, shall include every person who:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

2. Imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;

4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;

5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;

6. Is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;

7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § 58.1-613; or

8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether he holds, or is required to hold, a certificate of registration under § 58.1-613.

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if he:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;

2. Solicits or transacts business in this Commonwealth by employees, independent contractors, agents, or other representatives.

A dealer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the dealer enters into an agreement with a resident of the Commonwealth under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet site or otherwise, to the dealer if the cumulative gross receipts from sales by the dealer to purchasers in the Commonwealth who are referred to the dealer by all residents with this type of agreement with the dealer are in excess of \$10,000 during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident with whom the dealer has an agreement did not engage in any solicitation in the Commonwealth on behalf of the dealer that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question;

3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;

4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than twelve times during

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59 a calendar year to deliver goods sold by him;

60 5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by
61 means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or
62 distributed from a location within this Commonwealth;

63 6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular,
64 seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or
65 marketing activities occurring in this Commonwealth or benefits from the location in this
66 Commonwealth of authorized installation, servicing, or repair facilities;

67 7. Is owned or controlled by the same interests which own or control a business located within this
68 Commonwealth;

69 8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the
70 franchisee or licensee is required to obtain a certificate of registration under § 58.1-613; or

71 9. Owns tangible personal property that is rented or leased to a consumer in this Commonwealth, or
72 offers tangible personal property, on approval, to consumers in this Commonwealth.

73 D. Notwithstanding any other provision of this section, the following shall not be considered to
74 determine whether a person who has contracted with a commercial printer for printing in the
75 Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to
76 be required to register under § 58.1-613:

77 1. The ownership or leasing by that person of tangible or intangible property located at the Virginia
78 premises of the commercial printer which is used solely in connection with the printing contract with the
79 person;

80 2. The sale by that person of property of any kind printed at and shipped or distributed from the
81 Virginia premises of the commercial printer;

82 3. Activities in connection with the printing contract with the person performed by or on behalf of
83 that person at the Virginia premises of the commercial printer; and

84 4. Activities in connection with the printing contract with the person performed by the commercial
85 printer within Virginia for or on behalf of that person.

86 E. In addition to the jurisdictional standards contained in subsection C of this section, nothing
87 contained herein (other than subsection D) shall limit any authority which this Commonwealth may
88 enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require
89 the collection of sales and use taxes by any dealer who regularly or systematically solicits sales within
90 this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster,
91 printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or
92 displays or distributes paid commercial advertising in this Commonwealth which is intended to be
93 disseminated primarily to consumers located in this Commonwealth to report or impose any liability to
94 pay any tax imposed under this chapter solely because such broadcaster, printer, outdoor advertising
95 firm, advertising distributor, or publisher accepted such advertising contracts from out-of-state advertisers
96 or sellers.