

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 58.1-609.2 and 58.1-610 of the Code of Virginia, relating to sales and*  
 3 *use tax; agricultural exemptions.*

4 [H 1563]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 58.1-609.2 and 58.1-610 of the Code of Virginia are amended and reenacted as follows:**  
 8 **§ 58.1-609.2. Agricultural exemptions.**

9 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606  
 10 shall not apply to the following:

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

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

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

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

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

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

46 7. Agricultural produce, as defined in § 3.2-4738, and eggs, as described in § 3.2-5305, raised and  
 47 sold by an individual at local farmers markets and roadside stands, when such individual's annual  
 48 income from such sales does not exceed \$2,500.

49 8. *The following property used directly in producing agricultural products for market in an indoor,*  
 50 *closed, controlled-environment commercial agricultural facility:*

51 *a. Internal components or materials, whether or not they are affixed to real property, required (i) to*  
 52 *create, support, and maintain the necessary growing environment for plants, including towers for*  
 53 *growing plants; conveyances for moving such towers; and insulation, partitions, and cladding; (ii) for*  
 54 *lighting systems; (iii) for heating, cooling, humidification, dehumidification, and air circulation systems;*  
 55 *and (iv) for watering and water treatment systems;*

56 *b. External components, machinery, and equipment required (i) for heating, cooling, humidification,*

57 dehumidification, and air circulation systems; (ii) for utility upgrades and related distribution  
 58 infrastructure; and (iii) for creating, supporting, and maintaining the necessary growing environment for  
 59 plants; and

60 c. Structural components of (i) insulation, partitions, or cladding used in indoor vertical farming to  
 61 create and maintain the necessary growing environment for plants or (ii) translucent or transparent  
 62 elements, including windows, walls, and roofs, that allow sunlight in greenhouses to create and maintain  
 63 the necessary growing environment for plants.

64 For purposes of this subdivision, "indoor, closed, controlled-environment commercial agricultural  
 65 facility" shall include indoor vertical farming or a greenhouse, regardless of whether the greenhouse is  
 66 affixed to real property and "agricultural products" shall include any horticultural, floricultural,  
 67 viticulture, or other farm crops. However, the exemption provided by this subdivision shall not apply to  
 68 property used in producing cannabis or any derivative of cannabis.

69 **§ 58.1-610. Contractors.**

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

77 B. Any person who contracts to perform services in this Commonwealth and is furnished tangible  
 78 personal property for use under the contract by the person, or his agent or representative, for whom the  
 79 contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person  
 80 supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal  
 81 property so used, and shall pay a use tax based on the fair market value of the tangible personal  
 82 property so used, irrespective of whether or not any right, title or interest in the tangible personal  
 83 property becomes vested in the contractor. This subsection, however, shall not apply to the industrial  
 84 materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in  
 85 subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6;  
 86 the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth  
 87 in ~~subdivision~~ subdivisions 1 and 8 of § 58.1-609.2; or the exclusion for baptistries set forth in  
 88 § 58.1-609.10.

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

94 D. Tangible personal property incorporated in real property construction which loses its identity as  
 95 tangible personal property shall be deemed to be tangible personal property used or consumed within the  
 96 meaning of this section.

97 E. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in  
 98 this chapter, or the industrial materials and other industrial exclusions set out in § 58.1-609.3, the  
 99 exclusion for baptistries set out in § 58.1-609.10, or the partial exclusion for the sale of modular  
 100 buildings as set out in § 58.1-610.1, or (ii) impose any sales or use tax with respect to the use in the  
 101 performance of contracts with the United States, this Commonwealth, or any political subdivision  
 102 thereof, of tangible personal property owned by a governmental body which actually is not used or  
 103 consumed in the performance thereof.

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

107 G. Notwithstanding the other provisions of this section, any person or entity primarily engaged in the  
 108 business of furnishing and installing tangible personal property that provides electronic or physical  
 109 security on real property for the use of a financial institution, shall be deemed a retailer of such personal  
 110 property, including when such personal property is installed on real property not for the use of a  
 111 financial institution.