

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 58.1-602 of the Code of Virginia, relating to sales and use tax definitions.

[H 1713]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-602 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-602. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or § 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into this Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from this Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

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57 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting
 58 with the handling and storage of raw materials at the plant site and continuing through the last step of
 59 production where the product is finished or completed for sale and conveyed to a warehouse at the
 60 production site, and also includes equipment and supplies used for production line testing and quality
 61 control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and
 62 magazine printing when such activities are performed by the publisher of any newspaper or magazine
 63 for sale daily or regularly at average intervals not exceeding three months.

64 The determination whether any manufacturing, mining, processing, refining or conversion activity is
 65 industrial in nature shall be made without regard to plant size, existence or size of finished product
 66 inventory, degree of mechanization, amount of capital investment, number of employees or other factors
 67 relating principally to the size of the business. Further, "industrial in nature" shall include, but not be
 68 limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the
 69 Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

70 "Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of
 71 the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all
 72 applicable motor vehicle sales and use taxes have been paid.

73 "Occasional sale" means a sale of tangible personal property not held or used by a seller in the
 74 course of an activity for which he is required to hold a certificate of registration, including the sale or
 75 exchange of all or substantially all the assets of any business and the reorganization or liquidation of
 76 any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in
 77 number, scope and character to constitute an activity requiring the holding of a certificate of registration.

78 "*Open video system*" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for
 79 purposes of this chapter only, shall also include Internet service regardless of whether the provider of
 80 such service is also a telephone common carrier.

81 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,
 82 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,
 83 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body
 84 politic or political subdivision, whether public or private, or quasi-public, and the plural of such term
 85 shall mean the same as the singular.

86 "Prewritten program" means a computer program that is prepared, held or existing for general or
 87 repeated sale or lease, including a computer program developed for in-house use and subsequently sold
 88 or leased to unrelated third parties.

89 "Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in
 90 the form of tangible personal property or services taxable under this chapter, and shall include any such
 91 transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale
 92 must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale
 93 for resale which is not in strict compliance with such regulations shall be personally liable for payment
 94 of the tax.

95 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
 96 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than ninety
 97 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
 98 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
 99 a consideration; and (ii) sales of tangible personal property to persons for resale when because of the
 100 operation of the business, or its very nature, or the lack of a place of business in which to display a
 101 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
 102 adequate records, or because such persons are minors or transients, or because such persons are engaged
 103 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
 104 lose tax funds due to the difficulty of policing such business operations. The Tax Commissioner is
 105 authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax
 106 imposed by this chapter on the cost price of such tangible personal property to such persons and may
 107 refuse to issue certificates of registration to such persons.

108 The term "transient" shall not include a purchaser of camping memberships, time-shares,
 109 condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in,
 110 real estate, however created or sold and whether registered with this Commonwealth or not. Further, a
 111 purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a
 112 specific real estate project on an ongoing basis throughout its term shall not be deemed a transient;
 113 provided, however, that the term or time period involved is for seven years or more.

114 "Retailer" means every person engaged in the business of making sales at retail, or for distribution,
 115 use, consumption, or storage to be used or consumed in this Commonwealth.

116 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional
 117 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any

rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken or (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in this Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

2. That the provisions of this act shall be effective for taxable years beginning on and after January 1, 2000, unless one or more of the events listed in subsection C of § 58.1-3524 has occurred prior to such date. If any one of these events occurs before January 1, 2000, this act shall not become effective for taxable years beginning on and after January 1, 2000, but shall instead become effective for taxable years beginning on and after January 1 of the first year thereafter when none of the events listed in subsection C of § 58.1-3524 have occurred during the immediately preceding calendar year.