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SENATE BILL NO. 781

Offered January 13, 1999

A BILL to amend and reenact §§ 58.1-609.1 and 58.1-610 of the Code of Virginia, relating to the retail sales and use tax.

Patrons—Colgan; Delegate: Parrish

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.1 and 58.1-610 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-609.1. Governmental and commodities 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. Fuels which are subject to the tax imposed by Chapter 21 (§ 58.1-2100 et seq.) of this title. Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

4. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States. *For purposes of this subdivision, tangible personal property shall not be deemed to have been purchased or leased for use or consumption by an authority created pursuant to Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2, or by any economic or industrial development authority created by special act of the General Assembly, if such property is, or is intended to be, furnished, sold or leased by the authority to another person in connection with the performance of construction, reconstruction, installation, repair or other service with respect to improvements upon real estate that is intended to be used or occupied primarily by a nongovernmental entity or for nongovernmental purposes.*

5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.) of this title.

6. Motor fuels, diesel fuel, and clean special fuels for use in a boat or ship, upon which a fuel tax is refunded pursuant to § 58.1-2113 or § 58.1-2122.

7. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.

8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.

9. Watercraft as defined in § 58.1-1401.

10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46.

12. Tangible personal property for use or consumption by the Virginia Department for the Visually Handicapped or any nominee, as defined in § 63.1-142, of such Department.

13. From July 1, 1995, through June 30, 2000, tangible personal property for use or consumption by any community diversion program or successor program as established in accordance with the provisions of Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1.

14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Virginia Veterans Care Center Board of Trustees established pursuant to § 2.1-744.1.

§ 58.1-610. Contractors.

A. ~~Any~~ Except as provided in subdivision 4 of § 58.1-609.1, 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

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60 extent required by this chapter.

61 B. Any person who contracts to perform services in this Commonwealth and is furnished tangible
62 personal property for use under the contract by the person, or his agent or representative, for whom the
63 contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person
64 supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal
65 property so used, and shall pay a use tax based on the fair market value of the tangible personal
66 property so used, irrespective of whether or not any right, title or interest in the tangible personal
67 property becomes vested in the contractor. This subsection, however, shall not apply to the industrial
68 materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in
69 subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6;
70 the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth
71 in subdivision 1 of § 58.1-609.2; or the exclusion for baptistries set forth in subdivision 2 of
72 § 58.1-609.8.

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

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

86 E. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in
87 this chapter, or the industrial materials and other industrial exclusions set out in § 58.1-609.3 or the
88 exclusion for baptistries set out in subdivision 2 of § 58.1-609.8 or (ii) impose any sales or use tax with
89 respect to the use in the performance of contracts with the United States, this Commonwealth, or any
90 political subdivision thereof *to the extent the sale or lease is exempt from sales or use tax pursuant to*
91 *subdivision 4 of § 58.1-609.1*, of tangible personal property owned by a governmental body which
92 actually is not used or consumed in the performance thereof.

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