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## SENATE BILL NO. 781

Senate Amendments in [ ] — February 3, 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 unless paid for out of public funds. For the purposes of this subsection, "public funds" shall mean and include moneys from any source belonging to or for the use of the Commonwealth or any political subdivision of the Commonwealth. "Public funds" shall not include moneys provided by a nongovernmental entity if the moneys will be expended for the ] 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

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59 service with respect to real estate or fixtures thereon, and in connection therewith to furnish tangible  
60 personal property, shall be deemed to have purchased such tangible personal property for use or  
61 consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale,  
62 distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making  
63 the sale, distribution, or lease to or storage for such person shall be obligated to collect the tax to the  
64 extent required by this chapter.

65 B. Any person who contracts to perform services in this Commonwealth and is furnished tangible  
66 personal property for use under the contract by the person, or his agent or representative, for whom the  
67 contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person  
68 supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal  
69 property so used, and shall pay a use tax based on the fair market value of the tangible personal  
70 property so used, irrespective of whether or not any right, title or interest in the tangible personal  
71 property becomes vested in the contractor. This subsection, however, shall not apply to the industrial  
72 materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in  
73 subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6;  
74 the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth  
75 in subdivision 1 of § 58.1-609.2; or the exclusion for baptistries set forth in subdivision 2 of  
76 § 58.1-609.8.

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

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

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

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