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HOUSE BILL NO. 398

Offered January 13, 2016

Prefiled January 6, 2016

A *BILL to amend and reenact §§ 58.1-623 and 58.1-636 of the Code of Virginia, relating to sales and use tax; refunds.*

Patron—Sullivan

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-623 and 58.1-636 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-623. Sales or leases presumed subject to tax; exemption certificates.**

A. All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under this chapter.

B. The certificate mentioned in this section shall relieve the person who takes such certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that such certificate is no longer acceptable. Such certificate shall be signed by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the tangible personal property sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. If an exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under § 58.1-609.11, the exemption certificate shall be valid until the scheduled expiration date stated on the exemption certificate.

C. If a taxpayer who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding the property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, distribution, or lease, the taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the property to him.

D. If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

E. If a taxpayer fails to give the dealer at the time of purchase an exemption certificate previously issued by the Department, no interest shall be paid on a subsequent refund claim for any period prior to the date the taxpayer makes a complete refund claim with the Department. This subsection shall not apply to transactions exempted under self-executing certificates of exemption not issued to a specific taxpayer by the Department.

§ 58.1-636. Penalty for failure to file return or making false return.

A. Any dealer subject to the provisions of this chapter ~~failing who fails or refusing~~ *refuses* to file a return herein required to be made, ~~or failing who fails or refusing~~ *refuses* to file a supplemental return or other data required by the Tax Commissioner, ~~or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this chapter,~~ punishment for which is not otherwise herein provided; ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

B. Any person who for compensation (i) prepares a return, claim of refund, or exemption certificate that he knows is false as to any material matter or (ii) aids or assists in, or offers counsel or advice regarding, the preparation or presentation of a return, claim of refund, or exemption certificate that he knows is false as to any material matter is guilty of a Class 1 misdemeanor.

2. That the Department may promulgate guidelines implementing the provisions of this act and

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59 update such guidelines thereafter as deemed necessary by the Tax Commissioner. The development
60 and publication of such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000
61 et seq.).