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SENATE BILL NO. 1240

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on January 25, 2023)

(Patron Prior to Substitute—Senators Obenshain and Peake [SB 985])

A BILL to amend and reenact §§ 58.1-609.2 and 58.1-610 of the Code of Virginia, relating to sales and use tax; agricultural exemptions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.2 and 58.1-610 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-609.2. Agricultural 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. Commercial feeds; seeds; plants; fertilizers; liming materials; breeding and other livestock; semen; breeding fees; baby chicks; turkey poults; rabbits; quail; llamas; bees; agricultural chemicals; fuel for drying or curing crops; baler twine; containers for fruit and vegetables; farm machinery; medicines and drugs sold to a veterinarian provided they are used or consumed directly in the care, medication, and treatment of agricultural production animals or for resale to a farmer for direct use in producing an agricultural product for market; tangible personal property, except for structural construction materials to be affixed to real property owned or leased by a farmer, necessary for use in agricultural production for market and sold to or purchased by a farmer or contractor; and agricultural supplies provided the same are sold to and purchased by farmers for use in agricultural production, which also includes beekeeping and fish, quail, rabbit and worm farming for market.

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

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

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

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

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

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

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

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

b. External components, machinery, and equipment required (i) for heating, cooling, humidification, dehumidification, and air circulation systems; (ii) for utility upgrades and related distribution

60 infrastructure; and (iii) for creating, supporting, and maintaining the necessary growing environment for
61 plants; and

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

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

71 **§ 58.1-610. Contractors.**

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

79 B. Any person who contracts to perform services in this Commonwealth and is furnished tangible
80 personal property for use under the contract by the person, or his agent or representative, for whom the
81 contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person
82 supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal
83 property so used, and shall pay a use tax based on the fair market value of the tangible personal
84 property so used, irrespective of whether or not any right, title or interest in the tangible personal
85 property becomes vested in the contractor. This subsection, however, shall not apply to the industrial
86 materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in
87 subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6;
88 the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth
89 in ~~subdivision~~ subdivisions 1 and 8 of § 58.1-609.2; or the exclusion for baptistries set forth in
90 § 58.1-609.10.

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

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

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

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

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