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HOUSE BILL NO. 1858

Offered January 15, 1999

A BILL to amend and reenact §§ 58.1-602 and 58.1-609.10 of the Code of Virginia, relating to reduced sales and use tax for certain clothing, footwear, and computers.

Patrons—Day, Jackson and Johnson; Senator: Puckett

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-602 and 58.1-609.10 of the Code of Virginia are 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.

"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.

"Clothing and footwear" means (i) any article of wearing apparel to be worn by human beings, but not including watches, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, belt buckles, costumes, or rented formal wear, and (ii) fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which are used or consumed to make or repair such clothing (other than watches, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, belt buckles, costumes, or rented formal wear) and which become a physical component of such clothing, but not including such items made from pearls, precious or semi-precious stones, jewels or metals, or imitations thereof.

"Computer" means an internally programmed, automatic device that performs data processing.

"Computer hardware" means computer equipment and related peripheral devices, including, but not limited to, monitors, printers, modems, and external storage devices.

"Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

"Computer system" means a set of related, whether connected or unconnected, computer hardware and computer software.

"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

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60 as to foreign countries.

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

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

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

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

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

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

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

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

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

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

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

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

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional 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.

§ 58.1-609.10. Miscellaneous 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. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. Sales of tangible personal property to a nonsectarian youth organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and sponsoring a national or international camping assembly within this Commonwealth for seven continuous days or more with attendance in excess of

183 20,000, which sale of tangible personal property is for use or consumption at such camping assembly.

184 6. Tangible personal property purchased with food coupons issued by the United States Department
185 of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special
186 Supplemental Food Program for Women, Infants, and Children.

187 7. From July 1, 1995, through June 30, 1999, tangible personal property purchased for use or
188 consumption by a nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal
189 Revenue Code and organized exclusively to promote efficiency and fairness in the offer and sale of
190 securities for the benefit of investors, securities issuers, and the general public, by providing for
191 electronic communication, filing, processing, dissemination and review of securities registration
192 materials, and by serving as a database for securities law information filed with regulators having
193 primary and immediate authority to administer the regulation of the commerce of securities.

194 8. From July 1, 1995, through June 30, 1999, tangible personal property purchased for use in the
195 construction of improvements which are to be used solely for affordable rental dwelling units for
196 persons who are of the age of at least 62 years, if at least part of the funds for site development and the
197 construction are provided by an organization exempt from taxation under § 501 (c) (3) of the Internal
198 Revenue Code and if the amount of funds which would otherwise have to be provided by the tax
199 exempt organization is reduced by the amount of the sales and use tax exemption. The rental units shall
200 be considered to be affordable if the rent charged meets the criteria of the Federal Low Income Housing
201 Tax Credit Program.

202 9. From July 1, 1995, through June 30, 1999, tangible personal property donated or sold for
203 distribution to individuals in the United States who have been victims of a natural disaster which has
204 been declared a disaster for federal aid purposes by the President of the United States.

205 10. From July 1, 1995, through June 30, 1999, copies of medical records purchased by an attorney or
206 his law firm for use in case preparations.

207 11. From July 1, 1997, through June 30, 1999, tangible personal property purchased for use or
208 consumption by a nonstock, nonprofit corporation organized under the laws of the State of Delaware
209 which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and was formed for the
210 purposes of (i) promoting the development of the private sector of the nation of Romania and (ii)
211 carrying out all other purposes and policies of, and complying with, the relevant sections of the Support
212 For East European Democracy Act of 1989 (P.L. 101-179, 22 U.S.C. § 5401 et seq.).

213 12. From July 1, 1997, through June 30, 1999, tangible personal property purchased for use or
214 consumption by a nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal
215 Revenue Code and organized exclusively to promote the social welfare and defend the human rights of
216 persons born and unborn.

217 13. From July 1, 1997, through June 30, 1999, livestock sold at auction by a chamber of commerce
218 exempt from taxation under § 501 (c) (6) of the Internal Revenue Code, provided that the proceeds of
219 such auction are distributed to contestants in a junior livestock show and sale.

220 14. From July 1, 1997, through June 30, 1999, tangible personal property purchased for use or
221 consumption by any civic youth organization or corporation which is organized solely for the purpose of
222 promoting community little league-type baseball or softball.

223 15. From July 1, 1997, through June 30, 1999, a professional's provision of original, revised, edited,
224 reformatted or copied documents, including but not limited to documents stored on or transmitted by
225 electronic media, to its client or to third parties in the course of the professional's rendition of services
226 to its clientele.

227 16. From July 1, 1997, through June 30, 1999, lodging and meals for members paid by and tangible
228 personal property purchased for use or consumption by a nonprofit veterans association exempt from
229 taxation under § 501 (c) (19) of the Internal Revenue Code and which is organized to provide
230 scholarships to National Guard members and their families, extra life insurance for National Guard
231 members, and interest-free loans to National Guard members who have lost their full-time jobs, homes
232 or cars.

233 17. From July 1, 1998, through June 30, 1999, tangible personal property purchased for use or
234 consumption by any organization which is organized solely for the purpose of operating a nonprofit
235 swim team for children ages eighteen and under.

236 18. From July 1, 1998, through June 30, 1999, tangible personal property purchased for use or
237 consumption by a nonprofit corporation exempt from taxation under § 501 (c) (3) of the Internal
238 Revenue Code and organized exclusively to promote long-distance running as a competitive sport and
239 healthful exercise through publications, videos, races, training runs, safety workshops, clinics and
240 cooperative fitness events with local communities.

241 19. From July 1, 1998, through June 30, 1999, tangible personal property purchased for use or
242 consumption by a nonprofit corporation organized under the laws of the Commonwealth which is
243 exempt from federal income taxation pursuant to § 501 (c) (3) of the Internal Revenue Code and is
244 organized and operated exclusively to sponsor and promote baseball programs for boys ages thirteen

through eighteen and to sponsor baseball tournaments from local through state levels.

20. From July 1, 1998, through June 30, 1999, tangible personal property purchased for use or consumption by a nonprofit organization which is exempt from federal income taxation pursuant to § 501 (c) (3) of the Internal Revenue Code and is organized exclusively to advance the moral character of and promote sportsmanship, team spirit, fair play, honesty and patriotism among youth by providing and supervising a community soccer program.

21. From July 1, 1998, through June 30, 1999, tangible personal property purchased for use or consumption by a nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and organized exclusively to promote the many historic, cultural and natural qualities of a unique region that was once a stage for Civil War activity and continues to be a rich resource of rural and traditional town cultures and recreational activities.

22. From July 1, 1998, through June 30, 1999, tangible personal property purchased for use or consumption by a nonprofit corporation exempt from taxation under § 501 (c) (3) of the Internal Revenue Code which is organized for the purpose of fostering economic development by working with owners or managers of small businesses to create jobs, make capital investments, and increase sales, and which receives funding from the Department of Business Assistance, the U.S. Small Business Administration, and political subdivisions of the Commonwealth.

B. For the period commencing September 1, 1999, and ending September 7, 1999, and each September 1 through September 7 thereafter, the tax imposed by this chapter pursuant to the authority granted in §§ 58.1-603 and 58.1-604 shall not apply to (i) clothing and footwear, for which the receipt or consideration given or contracted to be given is less than \$500 per article of clothing, per pair of shoes or other article of footwear, or per item used or consumed to make or repair such clothing and which becomes a physical component of such clothing; (ii) computer systems for which the receipt or consideration given or contracted to be given is less than \$1,500 per system; and (iii) computers, computer hardware, or computer software for which the receipt or consideration given or contracted to be given is less than \$500 per computer, computer hardware, or computer software. On or before August 15, 1999, the Department of Taxation shall promulgate regulations which implement this subsection.