

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

27 actually sold or distributed as a marketable or finished product to the ultimate consumer. "Agricultural
28 commodity," for the purposes of this subdivision, means horticultural, poultry, and farm products,
29 livestock and livestock products, and products derived from bees and beekeeping.

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

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

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

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

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

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

52 a. Internal components or materials, whether or not they are affixed to real property, required (i)
53 to create, support, and maintain the necessary growing environment for plants, including towers for

54 growing plants; conveyances for moving such towers; and insulation, partitions, and cladding; (ii) for
55 lighting systems; (iii) for heating, cooling, humidification, dehumidification, and air circulation systems;
56 and (iv) for watering and water treatment systems;

57 b. External components, machinery, and equipment required (i) for heating, cooling,
58 humidification, dehumidification, and air circulation systems; (ii) for utility upgrades and related
59 distribution infrastructure; and (iii) for creating, supporting, and maintaining the necessary growing
60 environment for plants; and

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

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

70 **§ 58.1-610. Contractors.**

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

78 B. Any person who contracts to perform services in this Commonwealth and is furnished tangible
79 personal property for use under the contract by the person, or his agent or representative, for whom the
80 contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person

81 supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal
82 property so used, and shall pay a use tax based on the fair market value of the tangible personal property
83 so used, irrespective of whether or not any right, title or interest in the tangible personal property becomes
84 vested in the contractor. This subsection, however, shall not apply to the industrial materials exclusion or
85 the other industrial exclusions set out in § 58.1-609.3, including those set out in subdivisions 2, 3 and 4
86 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6; the governmental
87 exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth in ~~subdivision~~
88 subdivisions 1 and 8 of § 58.1-609.2; or the exclusion for baptistries set forth in § 58.1-609.10.

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

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

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

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

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

112 #