

HURRICANE PREPAREDNESS SALES TAX HOLIDAY **GUIDELINES AND RULES**

April 25, 2008

These guidelines and rules are published by the Department of Taxation ("TAX") to provide guidance to retailers and consumers regarding Virginia's Hurricane Preparedness Sales Tax Holiday, provided for by Senate Bill 1167 (*Acts of Assembly 2007*, Chapter 608). The sales tax holiday will be a recurring event, beginning each year on May 25 at 12:01 a.m. and ending at 11:59 p.m. on May 31. The holiday will expire in July of 2012. These guidelines and rules will be updated in future years as necessary.

During the Hurricane Preparedness Sales Tax Holiday period, consumers may purchase certain items in preparation for hurricanes and other emergencies exempt of the Retail Sales and Use Tax. The exempt items include: 1) portable generators used to provide light or communications or preserve food in the event of a power outage; and 2) certain other hurricane preparedness equipment. For a specific list of items qualifying for the Hurricane Preparedness Sales Tax Holiday, see the Appendix that follows these guidelines.

The sales tax exemption applies to only those portable generators with a selling price of \$1,000 or less per item, and each article of other hurricane preparedness equipment, as set forth above, with a selling price of \$60 or less. Dealers are also permitted to absorb the sales and use tax on all other items sold during the same time period, thereby relieving purchasers of the obligation to pay such tax. Dealers who elect to absorb such taxes will be liable for payment of the same to TAX.

TAX has worked with affected retailers, retail organizations, and the Office of Commonwealth Preparedness to develop these guidelines and rules. TAX has also developed a series of Frequently Asked Questions (FAQ's) that demonstrate the application of the guidelines and rules. As necessary, additional information will be published and posted on TAX's Sales Tax Holiday website, at www.tax.virginia.gov/salestaxholiday.

DEFINITIONS

"Accepting an order" occurs when a retailer has taken an action to fill the order.

"Actions to fill an order" includes placing an in-date stamp on a mail order or assigning an order number to a telephone or Internet order.

"Immediate shipment" means an order in which the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable or on back order by the seller.

“Layaway” means a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and at the end of the payment period, receives the merchandise. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

“Pay for” means that the seller receives cash, a credit card number, a debit authorization, a check or a money order.

“Rain check” means the seller allows a customer to purchase an item at a certain price at a later time because the particular item is out of stock.

“Rebate” means a refund of an amount of money by the manufacturer of a product to the retail purchaser of the product.

“Qualifying item” means any item of a type that qualifies for the Hurricane Preparedness Sales Tax Holiday exemption.

“Sales tax holiday” means a temporary period when sales taxes are not collectible or payable on all or a specific class of purchases.

“Storm shutter” means materials and products manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms.

EXEMPT PROPERTY UNDER THE HURRICANE PREPAREDNESS SALES TAX HOLIDAY

Sales of the following items are exempt from sales and use tax during the sales tax holiday period: Portable generators with a selling price of \$1,000 or less per item, and other hurricane preparedness equipment with a selling price of \$60 or less per item. For a specific list of items qualifying for the Hurricane Preparedness Sales Tax Holiday, see the Appendix that follows these guidelines.

ABSORPTION OF TAX

Virginia law requires dealers to collect the sales tax from their purchaser on the sale of all taxable items and remit those taxes. Virginia law does not generally permit retailers to advertise that they will absorb all or any part of the sales and use tax, or that they will relieve the purchaser, consumer, or lessee of the payment of all or any portion of the tax. Like the sales tax holiday for clothing and school supplies, and the holiday for Energy Star and WaterSense products, this prohibition against dealer absorption will not apply during the Hurricane Preparedness Sales Tax Holiday period and the 14 days immediately preceding its commencement. Throughout those 21 days, dealers may advertise that they will absorb the tax on any or all non-qualifying items during the seven-day sales tax holiday period. Thus, beginning May 11, 2008, dealers may begin

advertising that they plan to absorb the sales tax for non-qualifying items during the seven-day sales tax holiday period and may continue such advertising until May 31, 2008. The dealer may not begin absorbing the tax until the sales tax holiday period commences, and may only absorb such tax during the sales tax holiday period. When a dealer elects to absorb such tax, he will be liable for payment of such tax in the same manner as he is for tax collected from a purchaser.

Example 1: Retailer's inventory of clothing and accessories does not qualify for the Hurricane Preparedness Sales Tax Holiday. Fourteen days before commencement of the sales tax holiday, Retailer distributes circulars stating, "Come in **today** and we'll absorb the sales tax on our entire inventory in preparation for Virginia's first Hurricane Preparedness Holiday." Although Retailer is permitted to advertise absorption at any time during the fourteen days preceding commencement of the sales tax holiday, because Retailer advertised that absorption would take place prior to commencement of the sales tax holiday period, he is in violation of Virginia law. Note that the same result would occur if a Retailer distributed an identical circular fourteen days prior to the Energy Star and WaterSense or the clothing and school supplies' sales tax holidays.

Example 2: On April 25, 2008, one month before commencement of the Hurricane Preparedness Sales Tax Holiday, a furniture store distributes circulars offering a discount of 5% on all mattresses. The advertisement provides as follows: "all items purchased pursuant to this sale will still be subject to the 5% sales tax." Although the advertisement is distributed more than 14 days preceding the commencement of the Hurricane Preparedness Sales Tax Holiday, Retailer is not in violation of the law prohibiting dealer absorption. Retailer has not advertised that he will absorb the tax, but has only advertised a discount.

For purposes of absorption, in order for a dealer to determine the amount of taxes he will have to remit to TAX, the amount absorbed will equal the amount of sales tax the customer would have otherwise had to pay. For example, if a dealer wishes to absorb the tax on a non-qualifying generator with a selling price of \$2,000 he may charge the customer the regular \$2,000 price, but will be responsible for remitting the 5% (or \$100) sales tax. This is the amount of tax the customer would normally have been required to pay had the dealer not elected to absorb the sales tax for that item.

During all three of Virginia's sales tax holiday periods, dealers are permitted to absorb the sales tax on all other non-qualifying items sold during the holiday. Dealers may absorb the sales tax on their entire non-qualifying inventory, a portion of their non-qualifying inventory, or none of their non-qualifying inventory, as they choose. This means that dealers whose entire inventory consists of items that do not qualify for the sales tax holiday exemption may elect to absorb the sales tax on their entire inventory, a portion of their inventory, or none of their inventory.

Example 3: Retailer A markets cell phones, cell phone batteries, cell phone chargers and related equipment. Retailer A will not be required to collect the

Retail Sales and Use Tax on the sale of cell phone batteries and cell phone chargers priced under \$60, as these items qualify for the Hurricane Preparedness Sales Tax Holiday. However, unless Retailer A chooses to absorb the sales and use tax on the sale of the actual cell phones, he must collect the Retail Sales and Use Tax on these items, as well as cell phone chargers and cell phone batteries that exceed the \$60 threshold, as these items do not qualify for the Hurricane Preparedness exemption. Retailer A may absorb the sales tax on all cell phones, while collecting the tax on cell phone covers if he so chooses. It is up to Retailer A's discretion as to which items he chooses to absorb the tax. He may also elect not to absorb the sales tax on any non-qualifying items.

SALES TAX HOLIDAY PERIOD/TIMING

Dates of the sales tax holiday

The Hurricane Preparedness Sales Tax Holiday will be a recurring event, beginning at 12:01 a.m. on May 25 of every year and ending at midnight on May 31. In 2008, the Hurricane Preparedness Sales Tax Holiday will begin on Sunday, May 25th at 12:01 a.m. and end on Saturday, May 31st at 11:59 p.m. The final sales tax holiday for hurricane preparedness items will take place in May of 2012.

Beginning Sunday, May 11, 2008 and ending on Sunday, May 31, 2008 dealers will also be permitted to advertise that during the Hurricane Preparedness Sales Tax Holiday, they will absorb the tax on all or a portion of non-qualifying items if they elect to do so.

Different time zones

The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

Exchanges

The procedure for an exchange in regards to the Hurricane Preparedness Sales Tax Holiday is as follows:

- If a customer purchases a qualifying item during the exemption period, but later exchanges the item for a similar qualifying item, even if a different size, different color, or other feature, no additional tax is due, even if the exchange is made after the exemption period. No additional tax will be due, even if the replacement item has a greater price, provided the replacement item does not exceed the \$1,000 limit for portable generators and the \$60 limit for other qualifying hurricane preparedness items.

- If a customer purchases a qualifying item during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, whether or not the different item qualifies for the exemption, the appropriate sales tax is due on the sale of the newly purchased item.
- If a customer purchases a qualifying item before the exemption period, but during the exemption period, the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the sales tax holiday period.

Example 4: During the Hurricane Preparedness Sales Tax Holiday, Customer A purchases an AM/FM weather band radio with a \$25 sales price. After the Hurricane Preparedness Sales Tax Holiday has ended, Customer A returns to the store and exchanges the basic weather band radio for an upgraded miniature version of the same weather band radio, with a sales price of \$40. As no tax was paid during the holiday period, the customer will not be required to pay any additional tax on the exchange of the item, since the new item was a similar qualifying item, and the replacement item price did not exceed the \$60 limit for qualifying weather band radios.

Example 5: Customer C purchases a qualifying portable generator during the Hurricane Preparedness Sales Tax Holiday for \$900. One day after the holiday ends, Customer C replaces the generator with a portable generator with enhanced features, costing \$1,100. Customer C owes the total 5% sales tax on the newly purchased generator, despite its similarity to the original purchase because the replacement generator's price exceeds the \$1,000 threshold for portable generators.

Layaway Sales

The sale of a qualifying item under a layaway sale is exempt from tax if the purchaser selects the item and the retailer accepts the order for the item during the relevant sales tax holiday period, even if delivery occurs after the holiday period. Subsequent payments are also exempt. Items placed on layaway prior to the sales tax holiday will be eligible for the sales tax holiday exemption only if final payment is made by, and the property is given to the purchaser during the exemption period. In the latter instance, retailers who have already remitted the tax are entitled to take a credit on the following month's return, provided they give the customer a credit for any taxes that were added to the original base price of the item prior to the sales tax holiday.

Example 6: Customer places a portable generator with a sales price of \$500 on layaway in January, 2008. At the time of the purchase, Retailer

adds the 5% sales tax to the sales price to determine the total cost of the generator (\$525), and records that amount in his dealer return. From January until April, Customer makes payments of \$100 monthly toward the purchase of the generator. The final payment is made during the Hurricane Preparedness Sales Tax Holiday. Because Customer makes his final \$100 payment during the sales tax holiday, he is not required to pay the additional \$25 he would have owed had the Retail Sales and Use Tax been imposed. If Retailer has already remitted the tax to the Department of Taxation, he will be entitled to take a credit on the following month's return, provided he did not charge the customer the \$25 tax.

Rain checks

An item purchased pursuant to a rain check will be eligible for the exemption if the item is purchased during the sales tax holiday period, regardless of when the item is actually delivered. Issuance of a rain check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.

Return of eligible items

For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

SALES PRICE

Buy one, get one free or for a reduced price

Where items are sold under a "buy one, get one free" or "buy one, get one for a reduced price" special, a retailer cannot average the total price of items advertised as buy one, get one free/for a reduced price in order to qualify the items for exemption.

Coupons and discounts

Discounts: A discount given by a retailer constitutes a reduction in sales price and the amount of the discount is deducted before determining whether an item is eligible for the exemption.

Example 7: A two-way radio regularly priced at \$65.99 has been discounted by the dealer to \$59.99 during the sales tax holiday. This constitutes a reduction in the sales price, and brings the amount under the \$60 threshold. The two-way radio will not be subject to sales tax.

Store Coupon: A coupon given by a retailer constitutes a reduction in sales price and the amount of the discount is deducted before determining whether an item is eligible for the exemption. A coupon that reduces the sales price is treated as a store coupon if the seller is not reimbursed for the coupon amount by a third party.

Manufacturer's Coupons: A manufacturer's coupon or third party coupon constitutes a reduction in sales price **for purposes of the Hurricane Preparedness Sales Tax Holiday**. During the remainder of the year, a manufacturer's coupon or third party coupon does not constitute a reduction in the sales price of an item. Instead, the value of the manufacturer's coupon is included in determining the final selling price. Note: Manufacturer's coupons are treated identically for purposes of the sales tax holiday for clothing and school supplies. During the sales tax holiday for Energy Star and WaterSense products, however, the value of the manufacturer's coupon may not be subtracted from the advertised selling price to determine the final selling price.

Example 8: During the Hurricane Preparedness Sales Tax Holiday, Customer uses a manufacturer's coupon for \$10 off of a carbon monoxide detector with a sales price of \$70. Because the manufacturer's coupon constitutes a reduction in sales price for purposes of the Hurricane Preparedness Sales Tax Holiday, the price of the carbon monoxide detector is reduced to \$60, and the detector will qualify for the sales tax holiday exemption. If the manufacturer's coupon is used prior to or after the Hurricane Preparedness Sales Tax Holiday, for the same carbon monoxide detector, the coupon will not constitute a reduction in the sales price of the detector, and the retailer must collect sales tax on the full selling price of the carbon monoxide detector, including the \$10.00 value of the manufacturer's coupon.

Gift certificates

A gift certificate may not be used to reduce the cost price of an item in order to make that item eligible for exemption. However, eligible items sold and delivered during the sales tax holiday period using a gift certificate will qualify for the exemption.

Example 9: Customer A has a gift certificate with an appliance store in the amount of \$20. Customer A wishes to purchase a weather band radio, with a selling price of \$75. The cost of the radio exceeds the \$60 threshold for purposes of the Hurricane Preparedness Sales Tax Holiday; therefore, the entire price is subject to the Retail Sales and Use Tax. The fact that the customer has a gift certificate in the amount of \$20 does not decrease the cost of the radio, thereby bringing it under the threshold amount. Customer A may still use the gift certificate to purchase the radio, but the radio will be subject to the 5% Retail Sales and Use Tax.

Rebates

A rebate occurs after a sale and does not constitute a reduction in sales price. The amount of the rebate is not considered when determining whether an item is eligible for the exemption.

Example 10: Customer purchases a portable generator for \$1,200. The terms of the sale allow Customer to mail in a coupon and receive a \$200 rebate after the purchase. As a result of the rebate, Customer ultimately pays \$1000 for the portable generator. Because Customer pays \$1,000 only as a result of the rebate, the amount of the rebate is not considered in determining whether the generator is eligible for the exemption. Customer is required to pay the Retail Sales and Use Tax at the time he purchases the generator.

Sale of an Extended Warranty

The sale of an extended warranty, which provides for the provision of repair parts and labor, will not qualify for exemption during the Hurricane Preparedness Sales Tax Holiday, even if the item purchased under warranty is eligible for exemption during the holiday. Virginia law mandates that the Retail Sales and Use Tax applies to charges for extended warranty plans which provide for the provision of repair parts and labor. The sale of an extended warranty which provides for the provision of labor only can be purchased exempt of the Retail Sales and Use Tax, as such sales constitute the sale of a service, which is nontaxable in Virginia.

Example 11: Customer purchases a qualifying portable generator during the Hurricane Preparedness Sales Tax Holiday period. For an additional charge, Customer purchases an extended service and parts warranty. This extended service warranty entitles Customer to three years of on-site repair labor, including any necessary repair parts. As the warranty includes both repair parts and labor, it will not qualify for exemption during the Hurricane Preparedness Sales Tax Holiday. The extended warranty will be subject to the Retail Sales and Use Tax.

Shipping and handling charges

Under Virginia law, sales price does not include separately stated charges for the delivery of property sold by the seller to the purchaser, but does include separately stated charges for handling and service charges. Generally, for transactions in which the shipping and handling charges are combined, the charges are treated as “handling” charges and constitute part of the base price of the item.

During the seven-day sales tax holiday period, shipping and handling charges will not be included in the base price of the underlying item if that item qualifies for the sales tax holiday exemption. Shipping and handling charges will not be used to determine whether an item meets the \$1,000 threshold. Provided the underlying qualifying item meets the required threshold amount, that item will qualify for the sales tax holiday, and the associated shipping and handling charges will also be exempt from taxation. If an item exceeds the threshold requirements or is otherwise ineligible for exemption during the sales tax holiday, the shipping and handling charges will be included in the base price of the item, and the entire price will be subject to sales tax.

Example 12: During the Hurricane Preparedness Sales Tax Holiday, Customer A purchases and has Retailer deliver a diesel fuel tank that exceeds the \$60 threshold cost. Retailer imposes a separate shipping and handling charge of \$25. Because the fuel tank does not qualify for the Hurricane Preparedness Sales Tax Holiday, the shipping and handling charges will be included in the base price of the item, and the entire price will be subject to sales tax.

Example 13: Customer B purchases a qualifying portable generator from an Internet retailer with several physical locations in Customer’s state during the Hurricane Preparedness Sales Tax Holiday. The generator is priced at \$950. The Internet retailer imposes a shipping fee of \$50 and a separate handling fee of \$25.00. The separately stated shipping charges will not constitute part of the base price of the item, since Virginia does not add separately stated charges for the delivery of property to the sales price of any item. Because the price of the generator falls within the \$1000 threshold, during the Hurricane Preparedness Sales Tax Holiday only, the handling fee will not be included as part of the base price of the item, and the handling fee will not be subject to tax.

Sales of exempt and taxable items for one price

If items qualifying for the exemption are sold together with merchandise that does not qualify for the exemption as a single unit or item, such as a weather band radio with a built in clock, or a carbon monoxide detector with a built-in smoke

detector, the complete item will qualify for the Hurricane Preparedness Sales Tax Holiday, provided the price of the full unit does not exceed the \$1,000 limit for portable generators or the \$60 limit for other hurricane preparedness items. If an item qualifying for the exemption is sold as a package with an item that does not qualify for the exemption, the full package price will be subject to sales tax. This is the policy even if the collective price of the items falls below the sales tax holiday required threshold cost.

Example 14: Customer A purchases a weather band radio with a built in clock for \$60. Although clocks do not qualify for the Hurricane Preparedness Sales Tax Holiday, because the item is a single unit that includes a qualifying weather band radio, and because the item falls under the \$60 threshold, the item will not be subject to the Retail Sales and Use Tax.

Example 15: Customer B purchases a cell phone charger packaged with a cell phone cover for \$35. Although the cell phone charger would qualify for exemption during the Hurricane Preparedness Sales Tax Holiday, because it is packaged with a cell phone cover and offered for one price, the full package price will be subject to sales tax, despite the fact that the collective price of the items falls below the Hurricane Preparedness Sales Tax Holiday threshold for hurricane preparedness items.

Threshold

When the sales price of a Hurricane Preparedness qualifying item is greater than the ceiling threshold amount of \$1,000 for portable generators or \$60 for other hurricane preparedness items, sales or use tax is due on the **entire** charge for the item. The sales price is not reduced by the threshold amount.

Example 16: Retailer offers two-way radios for \$85. Although two-way radios qualify for the Hurricane Preparedness Sales Tax Holiday, the \$85 radios do not qualify for the exemption, since they exceed the price threshold by \$25. The entire sales price of the two-way radios is subject to tax, and not just the amount that exceeds the \$60 threshold.

DEALER PARTICIPATION AND ADMINISTRATION

Participation in the sales tax holiday

Exempt Hurricane Preparedness products

During the sales tax holiday, the law exempts qualifying Hurricane Preparedness products from the Retail Sales and Use Tax. If a dealer fails to allow the exemption, such dealer is in violation of the law. Any dealer collecting the sales and use tax on nontaxable transactions must

remit to TAX such erroneously or illegally collected tax unless he can show that the tax has been refunded to the purchaser or credited to the purchaser's account.

Absorption of the tax

During the sales tax holiday, dealers are permitted to absorb the sales tax on items that are sold during the holiday but do not qualify for the exemption. Businesses that carry exempt items and businesses that do not carry exempt items can both elect to absorb the tax. This provision is **voluntary**; however, any tax absorbed on non-qualifying items must be paid to the Tax Commissioner. Dealers are not required to absorb the tax on those items that do not qualify for the sales tax exemption, but are permitted to do so if they wish. (See pages 3-4 of these guidelines for additional information on dealer absorption).

Mail order, telephone, and Internet sales

Items purchased over the Internet, by mail order, or by telephone will be treated as exempt if 1) the item is both delivered to and paid for by the customer during the exemption period; or 2) the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period.

SPECIAL INELIGIBLE TRANSACTIONS

Custom orders

If a vendor places a special order for a customer that must be custom-made or manufactured for future delivery after the holiday, the merchandise will not be considered as available for immediate shipment, and the transaction will not be eligible for the holiday sales tax exemption.

Rentals

Rental items are not eligible for the exemption, regardless of whether the items are rented and paid for during the sales tax holiday period.

DEALER RECORDKEEPING

Refund of tax erroneously collected by Retailer

In order to obtain a refund of tax paid in error, a customer must return to the store with his sales receipt and obtain a refund from the retailer. The retailer can claim a credit for the tax refunded to customers on his sales and use tax return, provided he remitted the tax.

Records and reporting

Retail dealers are not required to obtain an exemption certificate or other certification from purchasers of qualified Hurricane Preparedness products during the sales tax holiday period. Retailers are required to maintain records that clearly identify the date on which qualified items are sold and the type, quantity and sales price of such tax-exempt merchandise for a period of three years following the sales tax holiday period. These records must identify the items that were taxed and those that were not taxed. The records may be in the form of register tapes, cash tickets, electronic records, or whatever records the dealer customarily uses to identify sales, provided that the items sold and taxes charged and not charged are clearly identifiable. Retail dealers should include the sales price of qualifying hurricane preparedness items sold during the sales tax holiday period in their total gross receipts and on the line on which all other exempt sales are reported on the monthly report (Form ST-9).

Retail dealers who elect to absorb the tax on non-qualifying items must be able to demonstrate that the proper amount of tax has been accrued and remitted.

ADDITIONAL INFORMATION

These guidelines are available on-line in the Tax Policy Library section of TAX's website, located at www.tax.virginia.gov and TAX's specific holiday site, www.tax.virginia.gov/salestaxholiday. For additional information, please contact the Department's Customer Service Section at (804) 367-8037, or send inquiries to the Department of Taxation, P.O. Box 715, Richmond, Virginia 23218-0715.

Approved:



Janie E. Bowen
Tax Commissioner