

## **SALES TAX HOLIDAY FOR CLOTHING AND SCHOOL SUPPLIES** **FREQUENTLY ASKED QUESTIONS**

**Question: What is a sales tax holiday?**

*Answer:* A sales tax holiday is a temporary period when sales taxes are not collectible or payable on all or a specific class of purchases.

**Question: When will Virginia's sales tax holiday for clothing and school supplies take place?**

*Answer:* The sales tax holiday will begin at 12:01 a.m. on Friday, August 7, 2009 and end at midnight on Sunday, August 9, 2009. In future years, the sales tax holiday will take place at 12:01 a.m. on the first Friday in August and end at midnight on the Sunday immediately following.

**Question: Will items rented during the sales tax holiday also qualify for the exemption?**

*Answer:* No. Rental items will not be eligible for the exemption, regardless of whether the items are rented out and paid for during the sales tax holiday period.

**Question: I am not a resident of Virginia. Can I make tax-free purchases during the holiday period?**

*Answer:* Yes. However, when the tangible personal property that is purchased without the payment of sales taxes in Virginia is exported for use in other states, use taxes might be payable on those purchases to the states where the purchased items will be used.

**What items will be exempt from sales and use tax during the sales tax holiday for clothing and school supplies?**

*Answer:* During the sales tax holiday period for clothing and school supplies, consumers may make tax-free purchases of school supplies with a selling price of \$20 or less per item and articles of clothing with a selling price of \$100 or less per article.

**Question: What items are included under school supplies?**

*Answer:* Virginia defines school supplies as items that are commonly used by a student in a course of study. The following is a list of items that are included in the term "school supplies" and are therefore exempt from tax during the sales tax holiday period if their sales price is \$20 or less per item. The list is effective for the 2009 holiday and is all-inclusive.

- Binder pockets
- Binders
- Blackboard Chalk
- Book bags
- Calculators
- Cellophane tape
- Clay and glazes
- Compasses
- Composition books
- Crayons
- Dictionaries and thesauruses
- Dividers
- Erasers (including dry erase marker erasers and dry erase marker cleaning solutions)
- Folders; expandable, pocket, plastic, and manila
- Glue, paste, and paste sticks
- Highlighters
- Index cards
- Index card boxes
- Legal pads
- Lunch boxes
- Markers (including dry erase markers and dry erase marker kits)
- Musical instruments, musical instrument accessories, and replacement items for musical instruments
- Notebooks
- Paintbrushes for artwork
- Paints (acrylic, tempera, and oil)
- Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board and construction paper
- Pencil boxes and other school supply boxes
- Pencil sharpeners
- Pencils
- Pens
- Protractors
- Reference books
- Reference maps and globes
- Rulers
- Scissors
- Sheet music
- Sketch and drawing pads
- Textbooks
- Watercolors
- Workbooks; and
- Writing Tablets

**Question: Are computers eligible for exemption during this holiday?**

*Answer.* No. Computers do not qualify as “school supplies.” The list of eligible items is an all-inclusive list.

**Question: For the school supplies exemption, must the item be intended for use in school or in connection with a school activity to be eligible for exemption?**

*Answer.* No. The item need not be intended for use in school, nor must the item actually be used in school activities to qualify for the school exemption. So long as the item is one listed above, does not exceed the threshold cost, and is purchased during the sales tax holiday period for clothing and school supplies, the purchase will not be subject to sales tax and use tax.

**Question: What items are included under clothing?**

*Answer.* Clothing means any article of wearing apparel and typical footwear intended to be worn on or about the human body. Clothing does not include sporting equipment or footwear designed primarily for athletic activity or protective use and not usually considered appropriate for everyday wear. The following is a list of items that are included in the term “clothing” and are therefore exempt from tax during the sales tax holiday period if their sales price is \$100 or less per item. This list is not all-inclusive.

- Aprons, household and shop
- Athletic supporters
- Baby bibs and clothes
- Baby receiving blankets
- Bandanas
- Bathing suits, swim trunks, cover-ups and bathing caps
- Beach capes and coats
- Belts and suspenders
- Bibs
- Boots
- Choir and altar clothing
- Clerical vestments
- Coats, jackets, and windbreakers
- Corsets and corset laces
- Costumes (sold not rented)
- Coveralls
- Diapers, children and adult, including disposable diapers
- Dresses
- Ear muffs
- Footlets
- Formal wear for men and women (sold, not rented)

- Fur coats and stoles, shawls and wraps
- Garters and garter belts
- Girdles
- Gloves and mittens for general use
- Golf clothing, caps, dresses, shirts, skirts, pants
- Gym suits and uniforms
- Hats and caps
- Hosiery
- Insoles, inserts for shoes
- Jeans
- Jerseys (both athletic and non-athletic)
- Lab coats
- Legwarmers
- Leotards and tights
- Lingerie
- Neckwear, including bow ties, neckties, and scarves
- Nightgowns
- Overshoes and rubber shoes
- Pajamas
- Pantyhose
- Raincoats, rain hats, and ponchos
- Robes
- Rubber pants
- Rubber thong/flip-flops
- Sandals
- Scarves
- Shirts and blouses
- Shoes and shoe laces
- Shorts
- Skirts
- Slacks
- Slippers
- Slips
- Sneakers
- Socks and stockings, including athletic socks
- Steel toed shoes
- Suits
- Suspenders
- Underwear
- Uniforms, athletic and non-athletic
- Vests
- Wedding apparel, including veils (sold not rented)

**Question: Can other items that are not included in this list also qualify as clothing?**

*Answer.* Yes. This list is not all-inclusive. Provided the item in question meets the definition of clothing as provided for in the sales tax holiday guidelines, and provided the item does not fall under the categories of clothing accessories, protective equipment or sport or recreational equipment, it may also qualify as clothing.

**Question: What types of items do not fall under the category of clothing?**

*Answer.* The following items are considered to be clothing accessories, protective equipment, or sport and recreational equipment and are not eligible to be purchased exempt of the tax.

Clothing accessories, or equipment

- Briefcases
- Cosmetics
- Fabric, thread, and yarn used to make clothing
- Hair notions, including, but not limited to, barrettes, hair bows, and hair nets
- Handbags
- Handkerchiefs
- Jewelry
- Sun glasses, non-prescription
- Umbrellas
- Wallets
- Watches
- Wigs and hair pieces

Protective Equipment

- Breathing masks
- Clean room apparel and equipment
- Ear and hearing protectors
- Face shields
- Hard hats
- Helmets
- Paint or dust respirators
- Protective gloves
- Safety belts
- Safety glasses and goggles
- Tool belts; and
- Welders gloves and masks

### Sport or recreational equipment

- Ballet and tap shoes
- Cleated or spiked athletic shoes
- Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf
- Goggles
- Hand and elbow guards
- Life preservers and vests
- Mouth guards
- Roller and ice skates
- Shin guards
- Shoulder pads
- Ski boots
- Waders
- Wetsuits and fins

**Question: Do sneakers and running shoes qualify for the sales tax holiday exemption, or are they considered sports equipment?**

*Answer.* Both sneakers and running shoes qualify for the sales tax holiday, provided they fall within the \$100 threshold.

## **Special Topics for Consumers**

### **Custom Orders**

**Question: I wish to custom order a specific eligible item during the sales tax holiday. Will this order qualify for the sales tax holiday exemption?**

*Answer.* 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 delivery, and the transaction will not be eligible for the holiday sales tax exemption.

### **Gift Certificates**

**Question: May I use a gift certificate to reduce the price of an item in order to make that item eligible for the exemption?**

*Answer.* No. 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.

### **Incorrect Charge for Tax**

**Question: If a retailer erroneously charges me tax on a qualifying exempt item during the sales tax holiday, under what process can I obtain a refund?**

*Answer.* 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 to TAX.

### **Internet Purchases**

**Question: I wish to purchase an eligible item during the sales tax holiday online. Will this order qualify for the sales tax holiday exemption?**

*Answer.* Yes. Items purchased online 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.

### **Layaway Transactions**

**Question: If I place an eligible item on layaway during the sales tax holiday period, will that item be subject to sales and use tax?**

*Answer.* No. The sale of an eligible 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 holiday period, even if delivery and/or final payment occurs after the holiday period. Subsequent payments are also exempt from sales tax. Items placed on layaway prior to the sales tax holiday will only be eligible for the sales tax holiday exemption if final payment is made and the property is given to the purchaser during the exemption period.

### **Mail Order Purchases**

**Question: I wish to purchase an eligible item by mail order during the sales tax holiday. Will this order qualify for the sales tax holiday exemption?**

*Answer.* Yes. Items purchased by mail order 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.

## **Rain Checks**

**Question: If I purchase an eligible item using a rain check during the sales tax holiday, will that item qualify for the exemption?**

*Answer.* Yes. 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. If the item purchased pursuant to a rain check is purchased prior to or subsequent to the sales tax holiday, the exemption will not apply, even if the item is actually delivered during the sales tax holiday period.

## **Rebates**

**Question: May I use a rebate to reduce the price of an item so that it will qualify for the sales tax holiday exemption?**

*Answer.* No. 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 an exemption.

## **Returns and Exchanges**

**Question: If I purchase an eligible item during the sales tax holiday, and return it after the sales tax holiday, must I then pay sales tax on the exchanged item?**

*Answer.* If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible 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. If a customer purchases an item of eligible property 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, the appropriate sales tax is due on the sale of the newly purchased item. If a customer purchases an item of eligible property 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 exemption period.

## **Telephone Purchases**

**Question: I wish to purchase an eligible item during the sales tax holiday by telephone. Will this order qualify for the sales tax holiday exemption?**

*Answer.* Yes. Items purchased 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.

## **Two-for-One Pricing**

**Question:** I would like to purchase two school supply items that the dealer has advertised as a buy-one-get one free special. The regular cost of each item is \$29.95. Since the items are being offered as buy-one-get one free, may I average the cost of the two items together so that they will then fall under the threshold and be eligible for the exemption?

*Answer.* No. 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.

## **Special Topics for Dealers**

### **Absorbing the Tax on Nonqualifying Items**

**Question.** I am a dealer who sells both items that qualify for the exemption and items that do not. May I absorb the tax on all items that do not qualify for the exemption during the sales tax holiday?

*Answer.* Yes. During the sales tax holiday, dealers are permitted to absorb the sales tax on all other items sold during the holiday. Even though Virginia law generally does not permit retailers to advertise that they will absorb sales or use tax due, during the sales tax holiday, and the fourteen days immediately preceding the start of the sales tax holiday, dealers may advertise that during the sales tax holiday, they plan to absorb the tax on any or all non-qualifying items. The dealer must remit that tax to the Department of Taxation. Note that the prohibition on dealer absorption is also lifted during the Energy Star and WaterSense Sales Tax Holiday in October and the Hurricane Preparedness Holiday in May.

**Question:** I am a retailer who does not sell any qualifying items. Am I required to absorb tax on non-qualifying items?

*Answer.* No. Although retailers who sell qualifying items must participate in the sales tax holiday, the provision that permits dealer absorption is NOT mandatory. Dealers are permitted, but not required, to absorb the sales tax on items that do not qualify for the exemption, and they may choose what, if any, non-qualifying items on which they will absorb the tax.

**Question:** I am a retailer who does not sell any qualifying items. May I choose only a few select items on which I will absorb the tax, or must I absorb the tax on all non-qualifying items?

*Answer.* Although retailers who sell qualifying items must participate in the sales tax holiday, the provision that permits dealer absorption is NOT mandatory. Dealers are given discretion to determine on which non-qualifying items (if any) they wish to absorb

the sales tax. They are permitted to absorb the sales tax on as little as a single item of their inventory, or as much as the store's entire inventory.

## **Exempt School Supply Items**

**Question: Should I allow the exemption only on items that are actually classified as school supplies in my inventory? For example, I stock novelty spiral bound notebooks in my stationery department—would these items also be exempt?**

The exemption applies to all of the items shown on the Department of Taxation's list of exempt school supplies, regardless of how these items are coded in your inventory or displayed in your place of business. For example, "notebooks" would apply to all types of notebooks, including those you may stock as office supplies or stationery.

## **Participating in the Sales Tax Holiday**

**Question: I am a retailer who does not wish to participate in the sales tax holiday. May I elect not to participate?**

*Answer.* No. Retailers are not permitted to elect not to participate in the sales tax holiday on the sale of qualifying items. Retailers may only collect from their customer sales taxes that are legally due. If a dealer fails to allow the exemption, such dealer is in violation of the law. Any dealer collecting the sales or use tax on nontaxable transactions must remit to the Department of Taxation 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.

Retailers are permitted, but not required, to absorb the sales tax on items that do not otherwise qualify for the sales tax holiday. If they elect to absorb the tax on these items, they must remit the tax to the Tax Commissioner.

## **Reporting and Record Keeping**

**Question: How are the exempt sales to be recorded on the sales and use tax return?**

*Answer.* Exempt sales of qualifying items sold during the sales tax holiday period should be recorded on Forms ST-9 and ST-8. 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.

## **Taxable and Nontaxable Transactions**

**Question: How will we treat items that exceed the \$20 or \$100 cost cap?**

*Answer.* When the sales price of an item is greater than the ceiling threshold amount set for the sales price of an exempt item, whether \$20 or \$100, sales or use tax is due on the entire charge for the item. The sales price is not reduced by the threshold amount.

**Example 1:** Customer A wishes to purchase a calculator (school supply) with a sales price of \$25.00. The ceiling threshold amount for exempt school supplies is \$20. Therefore, sales or use tax is due on the entire \$25.00. It is not just due on the \$5.00 that exceeds the threshold \$20.00 amount.

**Example 2:** Customer B purchases two shirts at \$50.00 each and a pair of shoes at \$125.00. No sales tax is due on either of the two \$50.00 shirts. Sales tax is due on the \$125.00 shoes since the cost of the shoes exceeds the threshold by \$25.00. Sales tax is due on the entire \$125.00 amount. It is not just due on the \$25.00 that exceeds the threshold \$100.00 amount

**Question: When shipping and handling charges are included in the price of an item, how will sales tax eligibility be determined?**

*Answer.* During the three-day sales tax holiday period for clothing and school supplies, 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 \$20 threshold for school supplies or the \$100 threshold for clothing and footwear. 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. This policy will be in effect only for the sales tax holiday period for clothing and school supplies, the Energy Star and WaterSense sales tax holiday period, and the Hurricane Preparedness sales tax holiday period. The general policy of adding the cost of handling or the combined shipping and handling cost to the base price of an item will remain in effect throughout the rest of the year.

**Question: As a retailer, may I offer two items separately that are generally sold as a unit to meet the cost threshold?**

*Answer.* No. Items that are generally sold as a unit, such as a pair of shoes, must continue to be sold as a unit and cannot be priced separately and sold as individual items to obtain an exemption.

**Question: If a dealer offers an item for a discounted price or offers up a retailer's coupon during the sales tax holiday, which price is used in determining the threshold cost for sales tax holiday eligibility purposes? Manufacturer's coupon?**

*Answer.* 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. The same is true for both a retailer's coupon and a manufacturer's coupon. A manufacturer's coupon constitutes a reduction in sales price, and will affect the determination as to whether a particular item qualifies for the sales tax holiday exemption. This rule is only in effect for purposes of the sales tax holiday for clothing and school supplies and the sales tax holiday for hurricane preparedness items, and does not affect Virginia's normal rule that a manufacturer's coupon does not constitute a reduction in sales price.

**Question: If items are offered up as sets, containing both exempt and taxable items, are the items be subject to tax during the sales tax holiday?**

If items are normally sold together with taxable merchandise as a set or single unit, the full price will be subject to sales tax.