

GUIDELINES FOR COMBINED SALES TAX HOLIDAY

June 20, 2017

These guidelines are published by the Department of Taxation to provide guidance to retailers and consumers regarding Virginia's combined sales tax holiday for hurricane preparedness items, clothing and school supplies, and Energy Star and WaterSense items. Effective July 1, 2015, Senate Bill 1319 (Chapter 382, 2015 *Acts of Assembly*) combined each of these existing sales tax holidays into one recurring three-day event, which begins at 12:01 a.m. on the first Friday in August of every year and ends at 11:59 p.m. on the Sunday immediately following. Effective July 1, 2017, Senate Bill 1018 and House Bill 1529 (Chapters 446 and 26, 2017 *Acts of Assembly*) extended the combined sales tax holidays until July 1, 2022. These guidelines and rules are applicable to the combined holiday event taking place in 2017 and subsequent years.

These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 et seq.) and are being published in accordance with the Tax Commissioner's general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. As necessary, additional information will be published and posted on the Department's website, www.tax.virginia.gov.

These guidelines represent the Department's interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

Prior to the 2015 legislative change, three separate sales tax holidays were administered each year in the Commonwealth. A hurricane preparedness sales tax holiday period took place in May, a holiday period for qualifying clothing and school supplies took place in August, and a holiday for Energy Star and WaterSense qualified items was held in October. Effective July 1, 2015 and for all subsequent years, there will be no May hurricane preparedness sales tax holiday, nor an October Energy Star and WaterSense sales tax holiday. Instead, these holidays will be combined with the sales tax holiday for clothing and school supplies, and will begin on the first Friday in August and end on the following Sunday.

During the combined sales tax holiday period, consumers may purchase certain items in preparation for hurricanes and other emergencies, certain clothing and school supplies and certain Energy Star and WaterSense qualified items exempt of the sales and use tax. Under current law, the rate of the state sales and use tax is 4.3%. The rate of the local option sales and use tax is 1%. Thus, the total rate of the tax is 5.3%. In addition,

Guidelines For Combined Sales Tax Holiday June 20, 2017

a 0.7% regional sales tax is now imposed in the Hampton Roads and Northern Virginia regions. Consumers that purchase qualifying items during the sales tax holiday will be exempt from the 5.3% sales and use tax if such purchases are made from retailers outside the Hampton Roads and Northern Virginia regions, and exempt from the 6% sales tax for items purchased from retailers in Hampton Roads and Northern Virginia.

EXEMPT ITEMS UNDER COMBINED SALES TAX HOLIDAY

Hurricane Preparedness Items: Exempt hurricane preparedness items include any new or used: 1) portable generators with a sales price of \$1,000 or less per item; 2) gas-powered chainsaws with a sales price of \$350 or less per item; 3) chainsaw accessories with a sales price of \$60 or less per item; and 4) other specified hurricane preparedness items with a sales price of \$60 or less per item. For a specific list of exempt hurricane preparedness items, see Appendix A.

School Supplies, Clothing, and Footwear: The exempt items also include each new or used school supply item with a selling price of \$20 or less per item and each new or used article of clothing or footwear with a selling price of \$100 or less. For a specific list of exempt school supplies, clothing and footwear, see Appendix B.

Energy Star and WaterSense Items: Exempt Energy Star and WaterSense qualified products include certain specified new or used items that: 1) have been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star or WaterSense programs; 2) are priced at \$2,500 or less per item; 3) are purchased for noncommercial home or personal use; and 4) are affixed with an Energy Star or WaterSense label. For a specific list of exempt Energy Star or WaterSense items, see Appendix C.

Dealers are also permitted to absorb the sales and use tax on all other items sold during the combined sales tax holiday period, thereby relieving purchasers of the obligation to pay such tax. Dealers who elect to absorb the taxes are liable for payment of the same to the Department.

The Department has worked with affected retailers, retail organizations, and state agencies to develop these guidelines and rules. Additionally, the Department has 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 the Department's website, at www.tax.virginia.gov/virginia-sales-tax-holiday.

Guidelines For Combined Sales Tax Holiday June 20, 2017

DEFINITIONS

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

“Accessory items” means incidental items worn on the person or in conjunction with clothing.

“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, such as hurricane preparedness items, clothing or school supplies or Energy Star or WaterSense items, that qualifies for a 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.

“Textbook” means a book that is designed to teach a subject in elementary schools, high schools, and institutions of higher learning. For purposes of the sales tax holiday, novels and other similar books, which may be used for extracurricular reading, are not included under this definition.

Guidelines For Combined Sales Tax Holiday June 20, 2017

ABSORPTION OF TAX

Virginia law requires dealers to collect and remit to the Department the sales taxes on the sale of all taxable items. Although Virginia law generally prohibits retailers from advertising that they will absorb all or any part of the sales or use tax, or relieve the purchaser, consumer, or lessee from paying the tax, this prohibition does not apply during the combined sales tax holiday, nor for the fourteen days immediately preceding the commencement of the combined sales tax holiday. During this 17-day period, dealers may advertise that they will absorb the tax on any or all non-qualifying items. The dealer may not absorb the tax prior to or following the sales tax holiday period, and may not advertise that he will do so.

Thus, for purposes of the combined sales tax holiday, fourteen days prior to the first Friday in August, dealers may begin advertising that they plan to absorb the sales tax for non-qualifying items during the three-day combined sales tax holiday weekend, and may continue such advertising until the conclusion of the holiday. When a dealer elects to absorb the tax, he becomes liable for payment of the tax in the same manner as he is for tax collected from a purchaser.

Example 1: Because none of Retailer's inventory of electronics qualifies for the sales tax holiday exemption, Retailer elects to absorb the 5.3% sales tax on his entire inventory during the holiday. To notify customers, he begins advertising of this intention 10 days before the sales tax holiday begins. Because Retailer is within the 14-day time period for advertising absorption, his advertisement does not violate Virginia law.

Example 2: The same Retailer from Example 1 distributes circulars fourteen days before the tax holiday begins, stating, "**Today** we are absorbing the sales tax on our entire inventory in preparation for the tax holiday." While Retailer may advertise absorption at any time during the fourteen days preceding commencement of the sales tax holiday, because Retailer advertised that he would absorb the tax prior to the holiday period, he has violated Virginia law.

In order for a dealer to determine the amount of taxes he has absorbed and must remit to the Department, the amount absorbed is equal to the amount of sales tax the customer otherwise would have owed. For example, if a dealer wishes to absorb the tax on a non-qualifying school supply that costs \$100, he may charge the customer the regular \$100 price, but is responsible for remitting the 5.3% or 6% sales tax (\$5.30 or \$6.00). This is the amount of tax the customer normally would have owed had the dealer not elected to absorb the sales tax for that item.

During the sales tax holiday, all dealers may elect to absorb the sales tax on their entire non-qualifying inventory, a portion of their non-qualifying inventory, or none of their non-qualifying inventory. This applies to dealers whose entire inventory consists of non-qualifying items, as well as dealers with some qualifying inventory.

Guidelines For Combined Sales Tax Holiday June 20, 2017

Example 3: Retailer's inventory includes lawnmowers, non-qualifying hand and power tools, and additional home improvement items, none of which qualify for the sales tax holiday exemption. Retailer may elect to absorb the sales tax on his entire inventory, on the lawnmowers only, on the hand and power tools only, on all the other home improvement items, or on a combination of these. He may also elect not to absorb the sales tax on any of the items in his inventory.

Example 4: Retailer's department store sells clothing, shoes, accessories, perfumes, and appliances. Among his merchandise, Retailer offers a pair of shoes for \$150, a shirt for \$75, accessories for \$10, and perfume for \$30. The \$75 shirt qualifies for the sales tax holiday exemption. Although the \$150 shoes constitute "clothing" under the sales tax holiday definition, they do not qualify for the exemption because they exceed the \$100 maximum sales price for clothing. The perfume and accessories do not qualify for the exemption. Retailer may elect to absorb the sales tax on any or all of the items that do not qualify for the sales tax holiday exemption, including the shoes, accessories, and perfume. If Retailer elects to absorb the sales tax on the \$150 shoes, he must pay the sales tax on the total price of the shoes, and not simply the amount by which the actual price exceeds the \$100 threshold.

Example 5: Retailer markets cell phones, cell phone batteries, cell phone chargers and related equipment. During the combined sales tax holiday, Retailer is not required to collect the sales and use tax on sales of cell phone batteries and cell phone chargers priced under \$60, as these are qualifying hurricane preparedness items. Unless, however, Retailer chooses to absorb the sales and use tax on the sale of the actual cell phones, he must collect the tax on these non-qualifying items, as well as cell phone chargers and cell phone batteries that exceed the \$60 threshold. Retailer may absorb the sales tax on all cell phones, while collecting the tax on cell phone covers if he so chooses. He may also elect not to absorb the sales tax on any non-qualifying items.

SPECIFIC ISSUES

The following information sets out the application of tax with respect to various matters concerning sales during the sales tax holiday period.

Sales Tax Holiday Period/Timing

Dates of the sales tax holiday

The combined sales tax holiday is a recurring event that begins each year at 12:01 a.m. on the first Friday in August and ends at 11:59 p.m. on the Sunday immediately following. The holiday will expire on July 1, 2022.

Guidelines For Combined Sales Tax Holiday June 20, 2017

Fourteen days prior to the first Friday in August, dealers also may elect to advertise that during the combined sales tax holiday, they will absorb the tax on all or a portion of non-qualifying items.

Different time zones

The time zone of the seller's location determines the authorized time period for the combined 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 combined 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.
- 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 6: During the combined sales tax holiday, Customer purchases a top-load Energy Star qualifying clothes washer for \$450 tax exempt. Five days later, Customer exchanges this item for a front-load Energy Star washer, priced at \$900. Although the replacement item is a different size and price, no tax is due on the replacement washer.

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 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 are eligible for the exemption only if final payment is made by, and the

Guidelines For Combined Sales Tax Holiday June 20, 2017

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 7: Customer places 2 shirts on layaway during the combined sales tax holiday, and pays a \$50 deposit on the shirts at that time. The shirts are priced at \$75.00 each. Customer makes a subsequent \$50 payment one month later. Customer makes the final payment of \$50 and receives the shirts two months after the sales tax holiday. The initial \$50 payment and the subsequent payments are not subject to sales and use tax because the shirts individually met the threshold cost of \$100, and the layaway was made during the sales tax holiday period.

Example 8: Customer places a portable generator with a sales price of \$500 on layaway in April from a Northern Virginia Retailer. At the time of purchase, Retailer adds the 6% sales tax to the sales price to determine the total cost of the generator and records that amount in his dealer return. From April until July, Customer makes payments of \$100 monthly toward the purchase of the generator. The final payment is made during the combined sales tax holiday. Because Customer makes his final \$100 payment during the sales tax holiday, he is not required to pay the additional \$30 he would have owed had the sales and use tax been imposed. If Retailer has already remitted the tax to the Department, he will be entitled to take a credit on the following month's return, provided he did not charge the customer the \$30 tax.

Rain checks

An item purchased pursuant to a rain check is eligible for the exemption if the item is purchased during the combined sales tax holiday period, regardless of when the item is actually delivered. Issuance of a rain check during the exemption period does 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 combined sales tax holiday, when a customer returns a qualifying item, 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

Guidelines For Combined Sales Tax Holiday June 20, 2017

that sales tax was paid on returned merchandise, and is not intended to change a seller's policy on the time period during which the seller will accept returns.

Sales Price

Articles normally sold as a unit

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 render these items subject to the exemption.

Example 9: A pair of shoes is sold for \$120. The shoes do not qualify for the sales tax holiday exemption because they exceed the price limit of \$100 per item. The retailer cannot price each shoe at \$60.00 and thereby exempt the sale of the pair of shoes from sales tax.

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 make the items eligible for exemption.

Example 10: Retailer advertises two calculators, originally priced at \$30.00 each as "buy one, get one free." Because Calculator 1 exceeds the price threshold for school supplies, it does not qualify for the sales tax holiday exemption. Because Calculator 2 is "free," it qualifies for the exemption, and no sales tax is due on the second calculator. Retailer A may not average the total price of the two calculators ($\$30 + \$0 = \$30 / 2 = \15.00) to bring the two calculators within the cost threshold.

Coupons and discounts

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

Example 11: During the sales tax holiday, a retailer has discounted a two-ray radio, regularly priced at \$65.99, to \$59.99. This constitutes a reduction in the sales price, and brings the amount under the \$60 threshold. The radio will be exempt from the sales tax during the holiday.

Store Coupon: A coupon given by a retailer constitutes a reduction in sales price, and the amount of the discount is deducted before

Guidelines For Combined Sales Tax Holiday June 20, 2017

determining whether an item is eligible for the exemption. A coupon that reduces the sales price is treated as a store coupon if a third party does not reimburse the seller for the coupon amount.

Example 12: Customer receives a 50% off coupon issued by a retailer, which she uses towards the purchase of a pair of shoes priced at \$120.00. This constitutes a reduction in the sales price, and brings the amount under the \$100 threshold. The shoes are not subject to sales tax.

Manufacturer's Coupons: During the sales tax holiday, a manufacturer's coupon or third party coupon constitutes a reduction in sales price **for all qualifying items**. During the remainder of the year, a manufacturer's coupon or third party coupon may not be treated as a reduction in the sales price for any item. Instead, the value of the manufacturer's coupon must be added to the amount paid to determine the selling price, for purposes of determining the sales and use tax.

Example 13: During the combined sales tax holiday, Customer uses a manufacturer's coupon for \$2.00 off when he purchases special manila paper, regularly priced at \$21.99. Because the manufacturer's coupon constitutes a reduction in the sales price of the manila paper, the sales price of the paper becomes \$19.99 and the paper qualifies for the sales tax holiday exemption. If the manufacturer's coupon is used prior to or after the sales tax holiday, for the same manila paper, costing \$21.99, the coupon does not constitute a reduction in the sales price of the paper, and the retailer must collect sales tax on the full selling price, including the \$2.00 value of the manufacturer's coupon.

Gift certificates

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

Example 14: During the combined sales tax holiday, Customer A buys shoes priced at \$120.00 using a \$25.00 gift certificate. Because the shoes' sales price exceeds \$100.00, the shoes are subject to the sales and use tax. The customer's \$25.00 gift certificate does not decrease the cost of the shoes to \$95.00, thereby bringing the shoes under the threshold amount, and rendering them eligible for the exemption.

Guidelines For Combined Sales Tax Holiday June 20, 2017

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 an exemption.

Example 15: 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 \$1000 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 sales and use tax at the time he purchases the generator.

Repairs and alterations to clothing and footwear

Separately stated charges for repairs and alterations to clothing and footwear are not included in the base price of the article of clothing or footwear, and do not affect the item's eligibility for exemption during the combined sales tax holiday. Virginia law exempts both separately stated charges for services rendered in repairing property sold and separately stated charges for alterations to apparel, clothing, and garments.

Example 16: Retailer sells formal attire, including tuxedos and formal dresses. Customers A and B purchase dresses for \$75.00 and \$125.00 respectively. Retailer charges an additional \$30.00 for alterations. Because Customer A's dress costs \$75.00, the additional \$30.00 alterations are not included in the base price of the dress, and do not affect the item's eligibility for the combined sales tax holiday. Customer A may purchase both the dress and the alteration services tax-free. Because Customer B's dress exceeds the \$100 threshold, she is subject to tax on the purchase of the dress, but the separately stated \$30.00 alteration charges are not subject to tax.

Sale of an Extended Warranty

The sale of an extended warranty, which provides for the provision of repair parts and labor, does not qualify for exemption during the combined sales tax holiday, even if the item purchased under warranty is eligible for exemption during the holiday. Virginia law requires the sales and use tax to apply 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 may be purchased exempt of the sales and use tax, because such sales are considered nontaxable sales of services in Virginia.

Guidelines For Combined Sales Tax Holiday June 20, 2017

Example 17: Customer purchases a WaterSense qualifying toilet during the combined sales tax holiday. 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 does not qualify for exemption during the combined sales tax holiday. The extended warranty is subject to the 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 combined sales tax holiday period, shipping and handling charges are not included in the base price of the underlying item if that item qualifies for the sales tax holiday exemption. Shipping and handling charges may not be used to determine whether an item meets the threshold sales price for qualifying items. Provided the underlying qualifying item meets the required threshold amount, that item qualifies for the sales tax holiday exemption, and the associated shipping and handling charges are also 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 are included in the base price of the item, and the entire price is subject to sales tax.

Example 18: During the combined sales tax holiday, Customer purchases and has Retailer deliver a diesel fuel tank that exceeds the \$60 maximum cost for other hurricane preparedness items. Retailer imposes a separate shipping and handling charge of \$25. Because the fuel tank does not qualify for the combined sales tax holiday exemption, the shipping and handling charge will be included in the base price of the item, and the entire price will be subject to sales and use tax.

Example 19: Customer B purchases a dress online priced at \$95.00 during the sales tax holiday. The Internet retailer imposes a shipping fee of \$10.00 and a separate handling fee of \$4.00. The separately stated shipping charges are not part of the base price of the item, since separately stated charges for the delivery of property in Virginia are never added to the sales price. Because the price of the dress falls below the \$100 threshold for clothing and footwear, during the sales tax holiday only,

Guidelines For Combined Sales Tax Holiday June 20, 2017

the handling fee is not included as part of the base price of the item, and the handling fee is not subject to tax.

Sales of two eligible items for one price

If two or more qualifying items are placed together as a set and offered for one price that exceeds the applicable cost threshold for qualifying items, the items in question do not qualify for the sales tax holiday.

Sales of exempt and taxable items for one price

If items qualifying for the exemption are normally sold together with merchandise that does not qualify for the exemption as a set or single unit, such as a weather band radio with a built-in clock or a stackable washer and dryer, the item will qualify for the combined sales tax holiday exemption, provided the price of the full unit does not exceed the maximum price allowed for the qualifying item. If an item qualifying for the exemption is sold as a package with an item that does not qualify for the exemption, sales tax will be imposed upon the full package price, regardless of whether the collective price of the items falls below the maximum sales price permitted for the qualifying item.

Example 20: Retailer offers a shirt, handkerchief, and tie combination as a set for \$85. Because the set contains a handkerchief (an ineligible item), sales tax is due on the full \$85 cost of the set, even though the set contains eligible items and the price of the entire set falls below \$100.

Example 21: Customer purchases a weather band radio with a built in clock for \$60. Although clocks are not qualifying hurricane preparedness items, because the clock radio is a single unit that includes a qualifying weather band radio, and because the item falls under the \$60 threshold, the item is exempt from the sales and use tax during the combined sales tax holiday.

Threshold

During the combined sales tax holiday, when the sales price of an item is greater than the maximum allowable sales price for an exempt item, whether \$1,000 for portable generators, \$350 for gas-powered chainsaws, \$60 for chainsaw accessories and other hurricane preparedness items, \$20 for school supplies, \$100 for clothing and footwear, or \$2,500 for Energy Star or WaterSense-designated 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 22: A book bag is sold for \$25. The book bag constitutes a qualifying school supply, but does not qualify for the exemption, since it

Guidelines For Combined Sales Tax Holiday June 20, 2017

exceeds the maximum sales price allowed by \$5. Sales tax must be imposed upon the entire sales price of the book bag, and not just the amount that exceeds the \$20 price threshold.

Dealer Participation and Administration

Participation in the sales tax holiday

Exempt items

During the combined sales tax holiday, the law exempts qualifying hurricane preparedness items, school supplies, clothing, and Energy Star and WaterSense designated items from the sales and use tax. If a dealer fails or refuses to provide the exemption, the dealer has violated the law. Any dealer collecting the sales or use tax on nontaxable transactions must remit any such erroneously or illegally collected tax to the Department, 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 combined sales tax holiday, dealers may 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 carry taxable items, both may elect to absorb the tax. This provision is **voluntary**. Dealers are not required to absorb the tax on non-qualifying items; however, any tax absorbed on non-qualifying items must be paid to the Tax Commissioner. (See pages 3-4 of these guidelines for additional information on dealer absorption).

Mail order, telephone, and Internet sales

Items purchased online, by mail order, or by telephone are 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 is not

Guidelines For Combined Sales Tax Holiday June 20, 2017

considered available for immediate shipment, and the transaction is not eligible for the sales tax holiday exemption.

Purchases made by contractor in commercial capacity

When a contractor enters into any type of real property improvement contract, except a retail sale plus installation contract, under which the contractor agrees to furnish the materials, supplies and necessary services in exchange for an agreed upon price, the contractor is the ultimate consumer of any Energy Star or WaterSense product used in performing the contract. Although the purchaser has paid the contractor an agreed upon price for the improvement to realty, the contractor remains the ultimate consumer of the Energy Star or WaterSense product. Therefore, the product is purchased for commercial use and does not qualify for the exemption. Similarly, purchases made by a developer who purchases appliances for use in residential homes the developer has built are deemed commercial purchases, ineligible for the exemption.

Rentals

Rental items are not eligible for the exemption, regardless of whether the items are rented out 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 items qualifying for exemption during the combined sales tax holiday period. Retailers must 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 sold subject to the sales and use tax and those that were sold exempt of the tax. The records may be in the form of register tapes, cash tickets, or whatever 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 items sold during the sales tax holiday period in their

**Guidelines For Combined Sales Tax Holiday
June 20, 2017**

total gross receipts and on the line on which all other exempt sales are reported on the sales and use tax monthly return (Form ST-9).

While retailers are not required to obtain an exemption certificate or other certification for any items purchased during the combined sales tax holiday, retailers must make a good faith effort to ensure that any Energy Star or WaterSense items purchased exempt of the tax are purchased for noncommercial home or personal use. Retailers can consider the number of items purchased and the name on the credit card or checking account by which the purchase is made, to assist in determining whether the item(s) in question are being purchased for noncommercial home or personal use. Energy Star or WaterSense items purchased using a business or company credit or debit card or drawn on a company's checking account are not eligible for the exemption.

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.

Energy Star Income Tax Deduction

Va. Code § 58.1-322 allows for a deduction equal to 20% of the sales and use tax paid in purchasing, for one's personal use, any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy. The deduction should not exceed \$500 in each taxable year. Note that this deduction is completely separate and distinguished from the combined sales tax holiday, which allows for the exempt purchase of qualifying Energy Star items. Any rules listed within these guidelines shall apply only to the combined sales tax holiday, and have no bearing on the income tax deduction provided on certain energy efficient items.

ADDITIONAL INFORMATION

These guidelines are available online in the Laws, Rules & Decisions section of the Department's website, located at www.tax.virginia.gov and the Department's specific holiday site, www.tax.virginia.gov/virginia-sales-tax-holiday. For additional information, please contact the Department's Office of Customer Services at (804) 367-8037, or send inquiries to the Department of Taxation, P.O. Box 715, Richmond, Virginia 23218-0715.

Approved:



Craig M. Burns
Tax Commissioner

**Guidelines For Combined Sales Tax Holiday
June 20, 2017**

**APPENDIX A
LIST OF QUALIFYING HURRICANE PREPAREDNESS ITEMS**

Sales Price of \$60 or less

The following hurricane preparedness items may be purchased exempt of the sales and use tax during the combined sales tax holiday, provided that the items have a sales price of \$60 or less per item.

- Artificial ice, blue ice, ice packs and reusable ice
- Batteries (excluding automobile or boat batteries), including
 - AAA cell
 - AA cell
 - C cell
 - D cell
 - 6 volt
 - 9 volt
 - Cell phone batteries
- Any portable, battery-operated or self-powered light sources including
 - Flashlights
 - Lanterns
 - Glow sticks
- Portable, battery-operated or self-powered radios (including self-powered radios with electrical power capability)
- Two-way radios
- Weather band radios and NOAA weather radios
- Tarpaulins, plastic sheeting, plastic drop cloths, and other flexible waterproof sheeting
- Bungee cords, rope, and paracords
- Ground anchor systems or tie down kits
- Ratchet straps
- Duct tape
- Carbon monoxide detectors
- Smoke detectors
- Fire extinguishers
- Gas or diesel fuel tanks or containers
- Water storage containers
- Nonelectric food storage coolers
- Bottled water
- Nonreusable water packets
- Manual can openers
- Storm shutter devices
- Cell phone chargers
- First Aid Kits

Sales Price of \$1,000 or less

The following hurricane preparedness items may be purchased exempt of the sales and use tax during the combined sales tax holiday, provided that such items have a selling price of \$1000 or less per item.

- Portable generators and generator power cords
- Inverters and inverter power cables
- Photovoltaic devices that generate electricity

Guidelines For Combined Sales Tax Holiday June 20, 2017

Chain saws and chain saw accessories

Gas-powered chain saws with a selling price of \$350 or less and chain saw accessories with a sales price of \$60 or less may be purchased exempt of the sales and use tax during the combined sales tax holiday. The following is an all-inclusive list of the items that are deemed “chain saw accessories”:

- Chains
- Chain saw bar and nose lubricants
- Two-cycle motor oil
- Chain sharpeners and files
- Bars
- Wrenches
- Carrying cases and scabbards
- Safety apparel, including chaps, gloves, hearing protectors, helmets, and protective glasses
- Repair parts

**Guidelines For Combined Sales Tax Holiday
June 20, 2017**

APPENDIX B
LIST OF QUALIFYING SCHOOL SUPPLIES AND CLOTHING

List of School Supplies Eligible for Exemption

“School supply,” means an item that is commonly used by a student in a course of study. For purposes of the sales tax holiday, the term does not include computers and such items may not be purchased exempt of the tax.

The following is an **all-inclusive** list of items that are included in the term “school supply” and are therefore exempt from tax during the sales tax holiday period, provided their sales price is \$20 or less per item. Only the following items are exempt as school supplies. Items need not be intended for use in school or in connection with a school activity to be eligible for the exemption.

- Binder pockets
- Binders
- Blackboard chalk
- Book bags, messenger bags, and totes
- Calculators
- Cellophane tape
- Clay and glazes
- Compasses
- Composition books
- Computer storage media; diskettes; recordable compact discs; and flash drives
- Crayons
- Dictionaries and thesauruses
- Disinfectant wipes
- Dividers
- Erasers (including dry erase marker erasers and dry erase marker cleaning solution)
- Folders: expandable, pocket, plastic, and manila
- Glue, paste, and paste sticks
- Hand sanitizer soap
- Highlighters
- Index card boxes
- Index cards
- Legal pads
- Lunch boxes and lunch bags (including disposable lunch bags)
- Markers (including dry erase markers and dry erase marker kits)
- Musical instruments, musical instrument accessories, and replacement items for musical instruments
- Notebooks

Guidelines For Combined Sales Tax Holiday June 20, 2017

- Paintbrushes for artwork
- Paints (acrylic, tempera, and oil)
- Paper: loose leaf ruled notebook paper, copy and printer 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
- Tissues
- Watercolors
- Workbooks; and
- Writing tablets

List of Clothing and Footwear Eligible for Exemption

Clothing

“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. These items may not be purchased exempt of the tax.

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, provided their sales price is \$100 or less per item. **This list is not all-inclusive.** Any other item that meets the definition of clothing and has a sales price of \$100 or less per item may be purchased exempt of the tax.

- Aprons, household and shop
- Athletic supporters
- Baby bibs and clothes
- Baby receiving blankets
- Bandanas

Guidelines For Combined Sales Tax Holiday June 20, 2017

- Bathing suits, swim trunks, cover-ups and bathing caps
- Beach capes and coats
- Belts
- 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, pajamas, and other nightwear
- Overshoes and rubber shoes
- Raincoats, rain hats, and ponchos
- Robes
- Rubber pants
- Rubber thong/flip-flops
- Sandals
- Scarves
- Shirts and blouses
- Shoes and shoe laces
- Shorts
- Skirts

**Guidelines For Combined Sales Tax Holiday
June 20, 2017**

- Slacks
- Slippers
- Slips
- Sneakers
- Socks and stockings, including athletic socks
- Steel toed shoes
- Suits
- Suspenders
- Underwear or undergarments
- Uniforms, athletic and non-athletic
- Vests
- Wedding apparel, including veils (sold not rented)

List of Ineligible Clothing Accessory Items, Protective Equipment and Sports or Recreational Equipment

“Clothing accessory items,” means incidental items worn on the person or in conjunction with “clothing.”

The following items are considered to be clothing accessory items that are subject to the tax. The following list contains examples and is not intended to be an all-inclusive list.

Clothing accessory items

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

“Protective equipment” means items that are intended for human wear and designed to protect the wearer against injury or disease or against damage or injury to other persons or property but are not suitable for general use. “Protective equipment” is not included within the definition of “clothing,” and does not qualify for exemption during the sales tax holiday. The following list contains examples and is not intended to be an all-inclusive list.

Guidelines For Combined Sales Tax Holiday June 20, 2017

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” means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. “Sport or recreational equipment” is not included within the definition of “clothing,” and does not qualify for the sales tax holiday. The following list contains examples and is not intended to be an all-inclusive list.

Sport or recreational equipment

- Ballet and tap shoes
- Bowling 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

**Guidelines For Combined Sales Tax Holiday
June 20, 2017**

**APPENDIX C
LIST OF QUALIFYING ENERGY STAR AND WATERSENSE ITEMS**

The following items are deemed exempt Energy Star or WaterSense items during the combined sales tax holiday, provided that:

- The item has been affixed with a Energy Star or WaterSense label; and
- The cost price of the item is \$2,500 or less; and
- The item is purchased for noncommercial or personal use.

Energy Star Qualified Products



Air Conditioners
Ceiling Fans
Dehumidifiers
Washing Machines/Clothes Washers

Dishwashers
Light Bulbs
Refrigerators

WaterSense Qualified Products



Bathroom Sink Faucets
Faucet Accessories
Showerheads

Toilets
Urinals
Landscape Irrigation Controllers