



## TAX BULLETIN 07-5

### *Virginia Department of Taxation*

April 9, 2007

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### **IMPORTANT INFORMATION REGARDING**

### **ADVERTISEMENTS FOR THE ABSORPTION OF SALES TAX**

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Since the enactment of the Virginia Retail Sales and Use Tax in 1966, with very limited exceptions, it has been illegal for a merchant to advertise that the merchant is either absorbing the sales tax or paying the sales tax for the customer. In recent months, the Department of Taxation ("TAX") has seen an increase in the number of such illegal advertisements.

*Virginia Code* § 58.1-626 prohibits any person from "advertising or holding out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of such tax." The law provides that any person who violates this law will be guilty of a Class 2 misdemeanor.

As the provisions of the law indicate, the prohibition applies to advertisements that directly hold out to the public an intention to absorb all or a portion of the sales or use tax, as well as to advertisements that indirectly provide for absorption of the retail sales and use tax.

This Tax Bulletin specifically overturns all prior rulings and advice given by TAX on this subject. As *Virginia Code* § 58.1-626 prohibits any person from advertising indirectly an intention to absorb all or any part of the sales or use tax, any promotion that offers to reduce the sales price of an item and mentions the sales tax in connection with that reduction will be deemed an indirect attempt to circumvent *Virginia Code* § 58.1-626. Accordingly, such an advertisement will be deemed to violate the provisions against dealer absorption.

The examples below illustrate the application of the prohibition against dealer absorption of the sales and use tax to various advertisements.

*Example 1:* A clothing and shoe store advertises a one-day sale in which the dealer will "pick up" the five percent sales tax on all items in the store. This is a clear violation of *Virginia Code* § 58.1-626, and the dealer may be guilty of a Class 2 misdemeanor.

**Tax Bulletin 07-5**  
**Virginia Retail Sales and Use Tax**  
**Advertisements for the Absorption of Sales Tax**  
**April 9, 2007**  
**Page 2**

*Example 2:* A department store releases a promotional ad that reads as follows: "We're offering you a special discount equal to the amount of sales tax on regular and sale-priced items in our clothing department...The purchase price will be reduced by a percentage equal to the applicable sales tax rate. Applicable sales tax will be added to the reduced purchase price, in accordance with applicable laws." Because this promotion mentions the sales tax in connection with the sales price reduction, this advertisement is deemed an indirect attempt to circumvent *Virginia Code* § 58.1-626, and is in violation of the provision prohibiting dealer absorption advertisements.

*Example 3:* A furniture store distributes circulars offering a discount of 5% on all mattresses. Although the discount offered is equal to the rate of tax imposed on sales of tangible personal property made in Virginia, because the advertisement does not mention the sales tax in connection with the reduction, the advertisement does not violate *Virginia Code* § 58.1-626.

**Sales Tax Holiday Exception**

Although Virginia law generally prohibits retailers from advertising that they will absorb all or any part of the sales or use tax, exceptions are permitted during certain specified periods each year. The 2006 General Assembly enacted Senate Bill 571 and House Bill 532 (Chapters 579 and 593, 2006 Acts of Assembly), under which an annual three-day sales tax holiday was created. During the "back to school" sales tax holiday, certain school supplies and clothing can be purchased exempt of the retail sales and use tax. The sales tax holiday occurs each year on the first Friday in August, and ends on the Sunday immediately following.

In 2007, the General Assembly enacted two additional sales tax holidays. Senate Bill 1167 (Chapter 608, 2007 Acts of Assembly) will provide an annual exemption from the retail sales and use tax, beginning in 2008, on certain hurricane preparedness items during a seven-day period. The sales tax holiday will begin each year on May 25 and end on May 31. The legislature also enacted House Bill 1678 and Senate Bill 867 (Chapters 176 and 817, 2007 Acts of Assembly), which established an annual four-day sales tax holiday, during which certain energy efficient products could be purchased exempt of the retail sales and use tax.

Provisions in each of the "sales tax holiday" bills above authorize dealers to advertise to the public that they will relieve the purchaser, consumer, or lessee of the payment of all or any portion of the retail sales and use tax. Dealers are permitted to distribute these advertisements during the sales tax holiday periods. Dealers may also distribute these advertisements during the fourteen days immediately preceding the sales tax holiday

**Tax Bulletin 07-5**  
**Virginia Retail Sales and Use Tax**  
**Advertisements for the Absorption of Sales Tax**  
**April 9, 2007**  
**Page 3**

period provided the advertisements address absorption that will take place during that applicable sales tax holiday only.

*Example 1:* On July 23, 2007, Retailer A plans to distribute advertisements promoting sales that will take place in the month of August. Retailer A's circular will contain a description of the August 3<sup>rd</sup> through 5<sup>th</sup> sales tax holiday on certain clothing and school supplies. In addition, Retailer A plans to absorb the sales tax on all other items available in his store and not covered by the sales tax holiday exemption during the three-day holiday. Although Virginia law generally prohibits dealer absorption advertisements, Retailer A's advertisement will not violate Virginia law because a retailer is permitted to advertise that he will absorb all or part of the sales tax during the sales tax holiday. Retailer A may advertise this up to 14 days prior to commencement of the sales tax holiday.

*Example 2:* In an attempt to entice a larger crowd prior to the August 3<sup>rd</sup>, 2007 sales tax holiday, Retailer B distributes circulars promoting a "pre-sales tax holiday" sale to take place the Thursday before the sales tax holiday (August 2<sup>nd</sup>). The advertisement provides that the dealer will absorb the sales tax on all items in the store during the "pre-sales tax holiday sale." Although the advertisement falls within the fourteen-day threshold, because the absorption will not take place during the sales tax holiday, the advertisement is in violation of *Virginia Code* § 58.1-626 and Retailer B may be guilty of a Class 2 misdemeanor.

If you have additional questions, please visit our website at <http://www.tax.virginia.gov>, or contact us at (804) 367-8037.