

NOTE: THE EXEMPTION FOR PERSONAL PROTECTIVE EQUIPMENT EXPIRED MARCH 24, 2022. PLEASE SEE TAX BULLETIN 22-5 FOR MORE INFORMATION.

## GUIDELINES FOR THE RETAIL SALES AND USE TAX EXEMPTION FOR PERSONAL PROTECTIVE EQUIPMENT

March 22, 2021

[House Bill 2185](#) and [Senate Bill 1403](#) (2021 Acts of Assembly, Special Session I, Chapters 55 and 56) amend the *Code of Virginia* to add *Va. Code* § 58.1-609.14, providing a temporary exemption from the Retail Sales and Use Tax for qualifying purchases of personal protective equipment (“PPE”).

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](http://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.

### Temporary Exemption

The PPE exemption is effective March 11, 2021 and will expire the first day following the expiration of the last executive order issued by the Governor related to the COVID-19 pandemic and the termination of the COVID-19 Emergency Temporary Standard and any permanent COVID-19 regulations adopted by the Virginia Safety and Health Codes Board. Governor Ralph S. Northam declared a state of emergency due to the COVID-19 pandemic on March 12, 2020 and has issued several executive orders concerning the COVID-19 pandemic. (See <https://www.governor.virginia.gov/executive-actions/>).

Effective January 27, 2021, the Department of Labor and Industry’s Safety and Health Codes Board promulgated its final *Standard for Infectious Disease Prevention of the Sars-Cov-2 Virus That Causes Covid-19* ([16 Virginia Administrative Code \(VAC\) 25-220](#)) (“Covid-19 Standard”).

The exemption is only valid for qualifying purchases of PPE made on or after March 11, 2021 and prior to the expiration of the last executive order issued by the Governor related to the COVID-19 pandemic and the termination of the COVID-19 Emergency Temporary Standard and any permanent COVID-19 regulations adopted by the Virginia Safety and

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Health Codes Board. No refunds will be provided regarding purchases made prior to March 11, 2021 or after the expiration of the exemption.

### **Qualifying Business**

The PPE exemption is available to any business, including a self-employed individual, doing business in Virginia that has in place a COVID-19 safety protocol that complies with the Covid-19 Standard set forth in 16 VAC 25-220. Such protocol should:

- Reasonably prevent the spread of COVID-19;
- Comply with all applicable federal, state, and local laws;
- Be consistent with best practices for infection prevention and workplace hygiene;
- Promote remote work to the fullest extent possible, including increasing the number of telework-eligible employees; and
- Implement enhanced cleaning, screening, testing, and contact tracing procedures and any additional infection-control measures that are reasonable in light of the work performed at the worksite and the rate of infection in the surrounding community.

### **Qualifying Personal Protective Equipment**

The following items qualify for the PPE exemption when purchased to control, prevent, and mitigate the spread of COVID-19 in compliance with the Covid-19 Standard:

#### **Disinfecting Products Approved for Use Against SARS-CoV-2 and COVID-19**

Disinfecting products that are EPA registered disinfectants and non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2 virus to kill germs on surfaces qualify for the PPE exemption. (See [16 VAC 25-220-40 L](#)).

#### **Coveralls, Full Body Suits, Gowns, and Vests**

Coveralls, full body suits, gowns, and vests worn to minimize exposure to SARS-CoV-2 or COVID-19 qualify for the PPE exemption. Recreational-use items or general-use work items designed to protect the wearer from weather, injury, or discomfort do not qualify for the PPE exemption. (See [16 VAC 25-220-30](#)).

#### **Engineering Controls**

Engineering controls such as substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 and COVID-19 disease-related workplace hazards and job tasks qualify for the PPE exemption. Qualifying engineering controls include but are not limited to Ultraviolet-C radiation sanitation equipment, indoor air quality equipment such as ionization, HEPA filtration, and physical barriers. (See [16 VAC 25-220-30](#)).

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### **Face Coverings, Face Shields, and Filtering Facepiece Respirators**

Face coverings meeting the Covid-19 Standard requirements for face coverings qualify for the PPE exemption. The Covid-19 Standard defines the term “face covering” to mean an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape, and shall not be made of material that makes it hard to breathe, such as vinyl. A face covering is not a surgical/medical procedure mask or respirator. A face covering is not subject to testing and approval by a state or government agency. (See [16 VAC 25-220-30](#)).

Face shields meeting the Covid-19 Standard requirements for face shields qualify for the PPE exemption. The Covid-19 Standard defines the term “face shield” to mean a form of personal protective equipment made of transparent, impermeable materials primarily used for eye protection from droplets or splashes for the person wearing it. (See [16 VAC 25-220-30](#)).

Filtering facepiece respirators meeting the Covid-19 Standard requirements for filtering facepiece respirators qualify for the PPE exemption. The Covid-19 Standard defines the term “filtering facepiece respirator” to mean a negative pressure air purifying particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. Filtering facepiece respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). (See [16 VAC 25-220-30](#)).

### **Gloves**

Gloves worn to minimize exposure to SARS-CoV-2 or COVID-19 qualify for the PPE exemption. Recreational-use gloves or general-use work gloves designed to protect hands from weather, injury, or discomfort do not qualify for the PPE exemption. (See [16 VAC 25-220-30](#)).

### **Hand Sanitizers**

Hand sanitizers meeting the Covid-19 Standard requirements for hand sanitizers qualify for the PPE exemption. The Covid-19 Standard defines “hand sanitizer” to mean an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in the Covid-19 Standard. In health care settings, Covid-19 Standard requires that alcohol-based hand sanitizers contain at least 60% ethanol or 70% isopropanol. (See [16 VAC 25-220-30](#) and [16 VAC 25-220-50](#)).

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### **Hand-Washing Facilities**

Fixed or portable hand-washing facilities qualify for the PPE exemption when purchased to control, prevent, and mitigate the spread of COVID-19 in compliance with the Covid-19 Standard.

### **HVAC, Testing, and Physical Modifications**

HVAC, testing, and physical modifications to comply with the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b) qualify for the exemption. (See <https://www.ashrae.org/technical-resources/bookstore/standards-62-1-62-2>).

### **Medical and Nonmedical Masks**

Medical masks meeting the Covid-19 Standard requirements for surgical/medical procedure masks qualify for the PPE exemption. The Covid-19 Standard defines “surgical/medical procedure mask” to mean a mask to be worn over the wearer’s nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. A surgical/medical procedure mask protects others from the wearer’s respiratory emissions. A surgical/medical procedure mask has a looser fitting face seal than a tight-fitting respirator. A surgical/medical procedure mask does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. A surgical/medical procedure mask is considered a form of personal protective equipment, but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA). (See [16 VAC 25-220-30](#)).

A nonmedical mask is a face mask, with or without a face shield, that covers the user’s nose and mouth and may or may not meet fluid barrier or filtration efficiency levels. Nonmedical masks qualify for the PPE exemption.

### **Physical Barriers and Electronic Sensors or Systems**

Physical barriers and electronic sensors or systems designed to maintain or monitor physical distancing of employees from other employees, other persons, and the general public, including acrylic sneeze guards, permanent or temporary walls, electronic employee monitors, and proximity sensors in employee badges qualify for the PPE exemption when purchased to control, prevent, and mitigate the spread of COVID-19 in compliance with the Covid-19 Standard.

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### **Respiratory Protection Equipment**

Respiratory protection equipment that complies with the Covid-19 Standard qualifies for the PPE exemption. (See definition of “respirator” in [16 VAC 25-220-30](#)).

### **Safety Glasses**

Safety glasses and goggles worn to minimize exposure to SARS-CoV-2 or COVID-19 in compliance with the Covid-19 Standard qualify for the PPE exemption. (See [16 VAC 25-220-30](#)).

### **Signs Related to COVID-19**

Signs related to COVID-19, including but not limited to those recommended by the Virginia Department of Health, the Virginia Department of Labor and Industry, the Centers for Disease Control, or the Food and Drug Administration qualify for the PPE exemption.

### **Temperature Checking Devices and Monitors**

Devices and monitors for checking and monitoring body temperature qualify for the PPE exemption.

### **Testing and Related Equipment Related to COVID-19**

COVID-19 testing and related equipment qualify for the PPE exemption.

### **Training Related to COVID-19**

Charges and registration fees paid for a training course are generally not subject to Retail Sales and Use Tax. In order for training materials to be eligible for the PPE tax exemption, the training program must be related to COVID-19.

### **Claiming the Exemption**

To claim the exemption, a qualifying business must complete a Form ST-13T exemption certificate and provide it to their vendor to be kept on file. Form ST-13T can be obtained from the Department’s website at [www.tax.virginia.gov](http://www.tax.virginia.gov).

The exemption is only available for purchases of qualifying personal protective equipment made on or after March 11, 2021 and prior to the expiration of the exemption. No refunds will be provided regarding purchases made prior to March 11, 2021 or after the expiration of the exemption.

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### **Real Property Contractors**

The PPE exemption is available to real property contractors for qualifying purchases to control, prevent, and mitigate the spread of COVID-19 among their employees in compliance with the Covid-19 Standard. As explained below, however, the exemption is not available to a contractor with respect to tangible personal property incorporated in real property construction which loses its identity as tangible personal property and becomes real property.

For purposes of the Retail Sales and Use Tax, a real property contractor (“contractor”) is the user or consumer of all tangible personal property furnished to him or by him in connection with real property construction, reconstruction, installation, repair, and similar contracts. A dealer making a sale to a contractor must collect the tax from him. A contractor must remit the use tax on any tangible personal property purchased exclusive of the tax and furnished to him except when such property is purchased and furnished to a contractor by a governmental unit or agency. If a supplier of a contractor does not collect the tax from the contractor, the contractor will be liable for the use tax on his purchases from the supplier. Accordingly, the PPE exemption is not available to a contractor with respect to tangible personal property incorporated in real property construction which loses its identity as tangible personal property and becomes real property. (See [23 VAC 10-210-410](#)).

### **Compliance**

If the Department receives information that a business has made a tax-exempt purchase of PPE and used the purchase for other than business use, the Department will notify such business. The business must then remit to the Department the tax due on the purchase to the Department, a penalty of 10 percent of the tax due, and interest at the rate prescribed in *Va. Code* § 58.1-15 accruing from the date of purchase.

“Other than business use” means, with respect to a purchased item or service, that (i) the business uses the purchased item or service more than 50 percent of the time for nonbusiness purposes or (ii) the business transfers a purchased item to a person other than the business or transfers the use of a purchased service to a person other than the business.

#### **Example 1:**

An accountant works from home. He purchases several large containers of hand sanitizer. Ten percent of the hand sanitizer is consumed by the accountant and his clients during their meetings in his home office. Ninety percent of the hand sanitizer is consumed by the accountant and his family with no connection to his accounting practice. The hand sanitizer is used for other than business use.

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**Example 2:**

A store owner purchases 10 boxes of nonmedical masks for use by her staff in the store. The owner takes one of the boxes of masks she purchased and gives them to her children for use at school. This owner has transferred the purchased items to a person other than the business.

**Example 3:**

A store owner purchases rubber gloves, safety glasses, and nonmedical masks on his business account. He takes these items home and uses them to renovate his kitchen. Regardless of the fact that they were purchased on the business account, this is an other than business use of the items.

If the Department receives information that a business is not following its COVID-19 safety protocol, the Department will notify the business that its qualification for the exemption provided by this section is revoked. Effective as of the date that the Department sends the notification, such business shall not be permitted to claim the PPE exemption.

**Additional Information**

These guidelines are available online under the Guidance Documents section of the Department's website at <http://tax.virginia.gov/guidance-documents>. The Department will issue additional guidance regarding this law change if necessary. For additional information, please visit [www.tax.virginia.gov](http://www.tax.virginia.gov) or contact the Department at (804) 367-8037.

**Approved:**

Craig M. Burns  
Tax Commissioner