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1 COMMONWEALTH OF VIRGINIA

2 DEPARTMENT OF TAXATION

3 2220 West Broad Street

4 Richmond, Virginia 23220

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7 IN RE:

8 Public Hearing to Receive Comments on the Repeal of the Virginia
9 Slaughter Hog and Feeder Pig Excise Tax Regulation, the Amendment of
10 the Retail Sales and Use Tax Maintenance Contracts and Warranty Plans
11 Regulation Section, the Amendment of the Retail Sales and Use Tax
12 Penalties and Interest; Audit Regulations Section.

13
14 Wednesday, March 25, 2009

15 Multipurpose Room (Rear Entrance)

16 2220 West Broad Street

17 Richmond, Virginia 23220

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CRANE-SNEAD & ASSOCIATES, INC.

4914 Fitzhugh Avenue, Suite 203

Henrico, Virginia 23230

Tel. No. (804) 355-4335

1 MR. MAYER: Good morning. My name is Joe
2 Mayer, and I would like to welcome you to this public hearing. I am a Lead
3 Tax Policy Analyst in the Department of Taxation's Office of Tax Policy,
4 Policy Development Division, and this morning I will be serving as the
5 Hearing Officer. Joining me this morning from TAX are John Josephs,
6 Bland Sutton, Jenna Lewis, and Kristen Peterson. This hearing is an
7 informational proceeding to gather any comments that you might have on
8 the three proposed regulatory actions that were published on February 16,
9 2009 in Volume 25, Issue 12 of the *Virginia Register of Regulations*. The
10 three regulatory actions are: the proposed amendment of the Retail Sales
11 and Use Tax Maintenance Contracts and Warranty Plans Regulation
12 Section, the proposed amendment of the Retail Sales and Use Tax Penalties
13 and Interest; Audits Regulation Section and the proposed repeal of the
14 Slaughter Hog and Feeder Pig Excise Tax Regulation.

15 We have brought a one-page summary of each regulatory
16 action, which is located on the table by the door. We also have copies of the
17 proposed text for each regulatory action, which are also located on the table.
18 Lastly, there are sign-in sheets. We request that you complete the sign-in
19 sheet so that we have a record of who is here and so we know who would
20 like to speak. If you did not get one, they are also located on the table.

21 TAX is in the process of reviewing all of its regulations. Many
22 of these regulations have not been revised since 1985. We anticipate the
23 revised regulations will provide better guidance to industry, taxpayers and
24 TAX personnel. Some of the changes will merely be format changes to
25 make the regulations consistent with the Virginia Register's *Form, Style and*

1 *Procedure Manual*. Other changes are to clarify TAX's existing policy or to
2 incorporate legislative changes.

3 Today's hearing is being conducted pursuant to the
4 Administrative Process Act as set forth in Virginia Code § 2.2-4007.01.
5 The Administrative Process Act affords an opportunity to the public to
6 present their views, data or arguments on proposed regulations. The notice
7 for this informational public hearing was published in the *Virginia Register*
8 *of Regulations*, Volume 25, Issue 12 on February 16, 2009 and on the Town
9 Hall website at www.townhall.virginia.gov.

10 TAX has established a 60-day period for taxpayers to submit
11 public comments; the public comment period began on February 16, 2009
12 and will end on April 27, 2009. Upon the conclusion of the public comment
13 period, TAX will analyze and respond in writing to any comments received.

14 Any comments received will be made a matter of public record
15 as provided under the Administrative Process Act.

16 At least five days prior to adopting the regulations, TAX will
17 send a copy of the final regulations, with the summary of public comments
18 and our responses to the comments, to everyone who comments here today.

19 The purpose of this public hearing is to receive input from
20 taxpayers and other interested parties, as well as to answer questions
21 regarding these regulation sections. TAX is committed to soliciting a high
22 level of input and will carefully consider all comments received. We cannot
23 commit that every change will be made; however, we are certainly open to
24 all comments.

25 I will briefly describe each regulatory action, then we will

1 receive comments on the proposed regulation. Please see the summaries on
2 the table or the TH-02 Agency Statement that was printed in the Virginia
3 Register of Regulations on February 16, 2009, which can also be found on
4 the Town Hall website, for more information on each regulatory action.

5 TAX has proposed amending Title 23 of the Virginia
6 Administrative Code, Agency 10, Chapter 210, Section 910, titled
7 Maintenance Contracts and Warranty Plans.

8 The application of the retail sales and use tax to maintenance
9 contracts was amended by the 1994 General Assembly, effective January 1,
10 1996. As a result, maintenance contracts are now taxed at one-half of the
11 total charge for the contract, as opposed to the previous policy of taxing the
12 entire amount of the contract if parts were included. This regulation is
13 being amended to reflect this statutory change. This regulation section is
14 also being amended to provide examples illustrating the tax application of
15 this change. In addition, the regulation section is being amended to include
16 a Definitions section.

17 Next, TAX has proposed amending Title 23 of the Virginia
18 Administrative Code, Agency 10, Chapter 210, Section 2032, titled
19 Penalties and Interest; Audits regulation Section.

20 During sales and use tax audits, TAX calculates the use tax
21 compliance of a business. The use tax compliance measures the business'
22 compliance in accruing and remitting the Virginia use tax on untaxed
23 purchases. The level of the use tax compliance ratio, calculated as a
24 percentage, determines the application of audit penalty to use tax liabilities
25 resulting from audit. Prior to October 1, 1999, TAX's use tax compliance

1 calculation did not include taxes paid to vendors. This regulation has been
2 amended to reflect a policy change announced in Public Document 00-98
3 (May 25, 2000) which permitted sales and use tax audit candidates an
4 alternative method to calculate their use tax compliance to include sales
5 taxes paid to vendors on taxable purchases.

6 Lastly, TAX has proposed the repeal of Title 23 of the Virginia
7 Administrative Code, Agency 10, Chapter 70, the Slaughter Hog and Feeder
8 Pig Excise Tax Regulation.

9 The Slaughter Hog and Feeder Pig Excise Tax was enacted by
10 the 1966 Acts of Assembly, Chapter 658. On September 19, 1984, TAX
11 adopted the Slaughter Hog and Feeder Pig Excise Tax Regulation effective
12 January 1, 1985. Effective November 1, 1986, federal law, "The Pork,
13 Promotion, Research, and Consumer Information Act of 1985", ceded to the
14 federal government the sole right to levy an excise tax on pork. As a result,
15 the Virginia Slaughter Hog and Feeder Pig Excise Tax provided for by
16 Virginia Code § 3.1-763.9, recodified effective October 1, 2008 as Virginia
17 Code § 3.2-2006, is no longer imposed. Although the Federal Pork Act
18 preempted the Slaughter Hog and Feeder Pig Excise Tax in Virginia, the
19 Virginia statute has not been repealed and remains on the books. If the
20 federal statute were to be invalidated, the Virginia statute would regain its
21 effectiveness. Unlike the statute, which is needed to ensure that the state
22 can retain its authority to collect the Slaughter Hog and Feeder Pig Excise
23 Tax in the event that the federal law is abolished, the corresponding
24 regulations provide no additional guidance beyond the clear meaning of the
25 statute. Repealing the regulation does not hinder Virginia's ability to

1 impose the tax, because the regulation sections simply parrot the statute.
2 Without this regulation, we would be in the same position that we were in
3 from the time the tax was passed in 1966 until January 1, 1985, when we
4 enacted the regulation.

5 We will receive comments on one regulatory action at a time. I
6 will call names from the sign-in sheets in the order I have them here. Please
7 pass up any additional sign-in sheets.

8

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NOTE: No one is present to give comments.

10

11 Thank you very much for coming today. Public participation is
12 an integral part of the regulatory process and TAX will carefully consider
13 each comment received.

14 Please be aware that the last day to submit written comments
15 on these three regulatory actions is April 17, 2009. Upon the conclusion of
16 the public comment period, TAX will analyze and respond in writing to any
17 comments received. In addition, at least five days prior to adopting the
18 regulations, TAX will send a copy of the final regulations, with the
19 summary of public comments and our responses to the comments, to
20 everyone who comments here today.

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Have a great day!

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PROCEEDINGS CONCLUDED.

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CERTIFICATE OF THE COURT REPORTER

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I, Medford W. Howard, Registered Professional Reporter and Notary Public for the State of Virginia at large, was the Court Reporter who took down and transcribed the proceedings in the hearing conducted this day, March 25, 2009 at 10:00 a.m. at the Department of Taxation.

I certify that this transcript, pages 1 through 6, are true and correct to the best of my knowledge.



Medford W. Howard