

# **ENERGY STAR AND WATERSENSE SALES TAX HOLIDAY GUIDELINES AND RULES**

September 10, 2009

These guidelines and rules are published by the Department of Taxation ("TAX") to provide guidance to retailers and consumers regarding Virginia's Energy Star and WaterSense Sales Tax Holiday, provided for by Senate Bill 867 and House Bill 1678 (Chapters 817 and 176, 2007 Acts of Assembly) and House Bill 1229 (Chapter 554, 2008 Acts of Assembly). The sales tax holiday is a recurring event, which begins at 12:01 a.m. on the Friday before the second Monday in October of every year and ends at midnight on the Monday immediately following. These guidelines and rules are applicable to the holiday event taking place in 2009 and subsequent years. The annual Energy Star and WaterSense Sales Tax Holiday will expire on July 1, 2012.

During this period, consumers may purchase certain Energy Star qualified products exempt of the Retail Sales and Use Tax. The exempt items include: any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has 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 program. The exemption is also available for WaterSense qualified products containing a WaterSense label. In order to be eligible for the Energy Star or WaterSense sales tax holiday exemptions, products must cost \$2,500 or less per item and be purchased for noncommercial home or personal use. Dealers are also permitted to absorb the sales and use tax on all other items sold during the same time period, thereby relieving purchasers of the obligation to pay such tax. Dealers who elect to absorb such taxes are liable for payment of the same to TAX.

TAX has worked with affected retailers, retail organizations, and state agencies to develop these guidelines and rules. TAX has also 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 TAX's Sales Tax Holiday website, at [www.tax.virginia.gov/salestaxholiday](http://www.tax.virginia.gov/salestaxholiday).

## **DEFINITIONS**

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

"Actions to fill an order" includes placing an in-date stamp on a mail order or assigning an order number to a telephone or Internet order.

"Energy Star qualified product" means any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as

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meeting or exceeding each such agency's requirements under the Energy Star program with a sales price of \$2,500 or less that is purchased for noncommercial or personal use. Every Energy Star qualified product is affixed with an Energy Star label on the product itself or on the product's packaging.

"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 that qualifies for the Energy Star or WaterSense 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.

"WaterSense qualified product" means any product that has been recognized as being water efficient by the WaterSense program sponsored by the U.S. Environmental Protection Agency ("EPA") as indicated by a WaterSense label.

### **EXEMPT PROPERTY UNDER THE ENERGY STAR AND WATERSENSE SALES TAX HOLIDAY**

Sales of the following items are exempt from sales or use tax during the October sales tax holiday period:

- Energy Star qualified products with a sales price of \$2,500 or less per product. Items that have been designated by the United States Environmental Protection Agency and the United States Department of Energy as an Energy Star Qualified

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Product have been affixed with an Energy Star label, as shown below, on the product itself or the product packaging. Every product that contains such a label, however, does not qualify for exemption during Virginia's Energy Star Sales Tax Holiday. Only dishwashers, clothes washers, air conditioners, ceiling fans, compact fluorescent light bulbs, dehumidifiers, programmable thermostats, and refrigerators that contain the Energy Star label qualify for the sales tax holiday exemption. Energy Star items can be found at the following website: [www.energystar.gov](http://www.energystar.gov); however, please note that only those items listed above qualify for the Virginia Energy Star and WaterSense Sales Tax Holiday.



- WaterSense qualified products with a sales price of \$2,500 or less per product. These products have been designated by the EPA as being water efficient, and are affixed with a WaterSense label, as shown below. Every product that contains such a label is eligible for exemption during the sales tax holiday period, provided the product meets the cost threshold and is purchased for residential or personal use. Currently, WaterSense qualified items include bathroom sink faucets, faucet accessories, and toilets. The Environmental Protection Agency is currently in the process of designating certain showerheads and urinals as WaterSense products. However, until these products are affixed with a WaterSense label, they will not qualify for exemption during Virginia's Energy Star and WaterSense sales tax holiday.



Each sales tax exemption applies only to items purchased for noncommercial home or personal use, and does not apply when the product is purchased for trade, business, or resale.

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There is no requirement that qualifying items be new, when purchased, to qualify for the Energy Star and WaterSense Sales Tax Holiday exemption.

**Example:** During the Energy Star and WaterSense Sales Tax Holiday period, Customer purchases a used dishwasher, affixed with the Energy Star label, from a used appliance retailer. Customer purchases the dishwasher for \$200. The dishwasher can be purchased exempt of the retail sales and use tax.

### **ABSORPTION OF TAX**

Virginia law requires dealers to collect the sales tax from their purchaser on the sale of all taxable items and remit those taxes. Virginia law does not generally permit retailers to advertise that they will absorb all or any part of the sales or use tax, or that they will relieve the purchaser, consumer, or lessee of the payment of all or any portion of the tax. These prohibitions will not apply during the Energy Star and WaterSense Sales Tax Holiday period and the 14 days immediately preceding its commencement. Throughout those 18 days, dealers may advertise that they will absorb the tax on any or all non-qualifying items during the four-day sales tax holiday period. The dealer may only absorb the tax during the sales tax holiday period, and may not begin absorbing the taxes before the sales tax holiday period begins. When a dealer elects to absorb such tax, he becomes liable for payment in the same manner as he is for tax collected from a purchaser.

**Example 1:** Retailer's office equipment store offers computers, copiers, and fax machines. Because none of Retailer's inventory qualifies for exemption during Virginia's Energy Star and WaterSense Sales Tax Holiday, Retailer absorbs the 5% 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 fourteen-day time period for advertising absorption, his advertisements are not in violation of Virginia law.

**Example 2:** Retailer's inventory includes televisions, camcorders, and similar electronics. Although none of Retailer's inventory constitutes an Energy Star or WaterSense qualified product under the Virginia sales tax holiday definition, Retailer still wants to participate in the sales tax holiday. Fourteen days before commencement of the sales tax holiday, Retailer distributes circulars stating, "Come in **today** and we will absorb the sales tax on our entire inventory in preparation for Virginia's Energy Star and WaterSense Sales Tax Holiday." Although Retailer is permitted to advertise absorption at any time during the fourteen days preceding commencement of the sales tax holiday, because Retailer advertised that absorption would take place prior to commencement of the sales tax holiday, he is in violation of Virginia law.

**Example 3:** One month before commencement of the Energy Star and WaterSense Sales Tax Holiday, a furniture store distributes circulars offering a discount of 5% on all mattresses. The advertisement provides as follows: "All

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items purchased pursuant to this sale will still be subject to the 5% sales tax.” Although the advertisement is distributed more than fourteen days preceding the commencement of the Energy Star and WaterSense Sales Tax Holiday, Retailer is not in violation of the law prohibiting dealer absorption. Retailer has not advertised that he will absorb the tax, but has only advertised a discount.

For purposes of absorption, in order for a dealer to determine the amount of taxes he, himself, must remit to TAX, the amount absorbed is equal to the amount of sales tax the customer would have otherwise had to pay. For example, if a dealer wishes to absorb the tax on a non-qualifying toilet costing \$200, he may charge the customer the regular \$200 price, but is responsible for remitting the 5% (or \$50) sales tax. This is the amount of tax the customer would normally have been required to pay had the dealer not elected to absorb the sales tax for that item.

During all three of Virginia’s sales tax holiday periods, dealers are permitted to absorb the sales tax on all other non-qualifying items sold during the holiday. Dealers may absorb the sales tax on their entire non-qualifying inventory, a portion of their non-qualifying inventory, or none of their non-qualifying inventory, as they choose. This means that dealers whose entire inventory consists of items that do not qualify for the sales tax holiday exemption may elect to absorb the sales tax on their entire inventory, a portion of their inventory, or none of their inventory.

**Example 1:** Retailer B’s inventory consists of bathroom items, including toilets, faucets, showerheads, and other items. Only a small percentage of Retailer B’s total inventory is affixed with the WaterSense label. Retailer B may elect to absorb the sales tax on the nonqualifying toilets only, the nonqualifying faucets only, the nonqualifying showerheads only, any combination of the three, or none of the nonqualifying items.

# Energy Star Sales Tax Holiday Guidelines and Rules

## Sales Tax Holiday Period/Timing

### Dates of the sales tax holiday

The sales tax holiday is a recurring event, beginning at 12:01 a.m. on the Friday before the second Monday in October of every year and ending at midnight on the second Monday in October. The Energy Star and WaterSense Sales Tax Holiday will expire on July 1, 2012.

Beginning fourteen days prior to commencement of the holiday and ending on the last day of the holiday period, dealers will also be permitted to advertise that during the Energy Star and WaterSense Sales Tax Holiday, they will absorb the tax on all or a portion of non-qualifying items if they elect to do so.

### Different time zones

The time zone of the seller's location determines the authorized time period for a 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 any of the three sales tax holidays 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. No additional tax is due, even if the replacement item has a greater price, provided the replacement item does not exceed the \$2,500 limit.
- 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 1:** During the Energy Star and WaterSense Sales Tax Holiday, Customer A purchases a top-load Energy Star qualified clothes washer for

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\$450. Customer pays no tax on this purchase. 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 additional tax is due.

**Example 2:** Customer B purchases a WaterSense qualified toilet exempt of the sales tax during the sales tax holiday for \$200. One day after the holiday ends, Customer B replaces that toilet with another toilet that also costs \$200, but is not affixed with the WaterSense label. Customer B owes the total 5% sales tax on the toilet, despite its identical price, because the replacement toilet is not affixed with the WaterSense label, and therefore, does not qualify for exemption during the holiday.

**Example 3:** Customer C purchases a qualifying ceiling fan during the Energy Star and WaterSense Sales Tax Holiday for \$100. Three days after the exemption period, Customer C returns the item and receives a store credit, which he uses to purchase an air conditioner for \$350. The total \$350 purchase price for the air conditioner is subject to the 5% retail sales and use tax.

### 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 relevant sales tax 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 sales tax holiday exemption only if final payment is made by, and the 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 1:** Customer places a refrigerator affixed with the Energy Star label on layaway during the four-day sales tax holiday, paying a \$200 deposit at that time. The refrigerator is priced at \$2,000. Customer makes subsequent \$200 payments monthly, and makes the final payment nine months after the sales tax holiday. The initial \$200 payment and the subsequent payments are not subject to sales and use tax because the refrigerator individually met the threshold cost of \$2,500, satisfied the Energy Star qualifications, and was placed on layaway during the sales tax holiday period.

**Example 2:** Customer places a refrigerator priced at \$2,000 and affixed with the Energy Star label on layaway ten months prior to the commencement of the Energy Star and WaterSense Sales Tax Holiday.

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The retail sales and use tax is added to the overall price of the refrigerator, before individual payments can be made. Customer makes his final payment during the Energy Star and WaterSense holiday weekend. Because the refrigerator qualifies for exemption during the Energy Star and WaterSense Sales Tax Holiday, final payment was made, and the property was given to the purchaser during the exemption period, Customer is entitled to a refund of sales tax paid to the retailer. The retailer may take a credit on the following month's return if he has already provided Customer with a refund.

### Rain checks

An item purchased pursuant to a rain check is eligible for the exemption if the item is purchased during the 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 sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, 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 that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

## **Sales Price**

### 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 qualify the items for exemption.

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### Coupons and discounts

**Discounts:** 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.

**Example:** Customer A wishes to purchase a refrigerator, affixed with the Energy Star label and regularly priced at \$2,750. The retailer has offered this item on sale for \$2,499. This constitutes a reduction in the sales price, and brings the amount under the \$2,500 threshold. The refrigerator will not be subject to sales tax.

**Store Coupon:** A coupon 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. A coupon that reduces the sales price is treated as a store coupon if the seller is not reimbursed for the coupon amount by a third party.

**Manufacturer's Coupons:** A manufacturer's coupon or third-party coupon does not constitute a reduction in sales price for purposes of the Energy Star and WaterSense Sales Tax Holiday. During the Energy Star and WaterSense holiday, the value of the manufacturer's coupon is added to the amount paid to determine the selling price. *Note:* Manufacturer's coupons are treated differently during the sales tax holiday for school supplies and clothing and the sales tax holiday for emergency preparedness items.

**Example:** During the Energy Star and WaterSense Sales Tax Holiday, Customer B uses a manufacturer's coupon for \$100 off of an Energy Star refrigerator, regularly priced at \$2,600. Because the manufacturer's coupon does not constitute a reduction in the sales price of the refrigerator, for purposes of determining whether the refrigerator qualifies for the Energy Star exemption, the cost of the refrigerator is \$2,600. The refrigerator is subject to the 5% retail sales and use tax.

### Gift certificates

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.

**Example 1:** Customer A has a gift certificate with an appliance store in the amount of \$25. Customer A wishes to purchase a refrigerator, priced at \$2,525. The cost of the refrigerator exceeds the \$2,500 threshold, and

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the entire price is therefore subject to the retail sales and use tax. The fact that the customer has a gift certificate in the amount of \$25 does not decrease the cost of the refrigerator to \$2,500, thereby bringing the refrigerator under the threshold amount. Customer A may still use the gift certificate to purchase the refrigerator, but the refrigerator is subject to the 5% retail sales and use tax.

### 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.

### 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 Energy Star and WaterSense Sales Tax Holiday, even if the item purchased under warranty is eligible for exemption during the holiday. Virginia law mandates that the retail sales and use tax 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 can be purchased exempt of the retail sales and use tax, as such sales constitute the sale of a service, which is nontaxable in Virginia.

**Example:** Customer purchases a qualifying toilet during the Energy Star and WaterSense Sales Tax Holiday period. 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 will not qualify for exemption during the Energy Star and WaterSense Sales Tax Holiday. The extended warranty is subject to the retail 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 four-day 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 are not used to determine whether an item meets the \$2,500 threshold. Provided the underlying

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qualifying item meets the required threshold amount, that item qualifies for the sales tax holiday, 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 1:** During the Energy Star and WaterSense Sales Tax Holiday, Customer A purchases and has Retailer deliver a non-qualifying faucet costing \$350 to his home. Retailer imposes a separate shipping and handling charge of \$25. Because the faucet does not qualify for the Energy Star and WaterSense 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 2:** Customer B purchases an Energy Star qualified refrigerator from an Internet retailer with several physical locations in Customer's state. The refrigerator is priced at \$2,450 and the purchase is made during the sales tax holiday. The Internet retailer imposes a shipping fee of \$50 and a separate handling fee of \$25.00. The separately stated shipping charges will not constitute part of the base price of the item, since Virginia does not add separately stated charges for the delivery of property to the sales price of any item. Because the price of the refrigerator falls below the \$2,500 threshold, during the Energy Star Sales Tax Holiday only, the handling fee will not be included as part of the base price of the item, and the handling fee will not be subject to tax.

### Sales of exempt and taxable items for one price

If items qualifying for the exemption are sold together with merchandise that does not qualify for the exemption as a single unit, such as a stackable washer and dryer or a refrigerator and freezer combination, the full unit qualifies for the Energy Star Sales Tax Holiday, provided the price of the full unit does not exceed \$2,500. If an item qualifying for the exemption is sold as a package with an item that does not qualify for the exemption, the full package price is subject to sales tax. This is the policy even if the collective price of the items falls below the sales tax holiday required threshold cost.

**Example 1:** Customer A purchases a stackable washer and dryer affixed with the Energy Star label for \$1,000. Although dryers are not Energy star labeled and do not qualify for the Virginia Energy Star Sales Tax Holiday, because the item is a single unit that includes a qualifying washer, and because the item falls under the \$2,500 threshold, the unit will not be subject to the retail sales and use tax.

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**Example 2:** Customer B purchases a separate washer and dryer, which Retailer offers for a package deal of \$1,400. The price of \$1,400 only applies to the package and the washer and dryer cannot be purchased separately at this price. Because the items do not constitute a single unit, the full package price is subject to sales tax, despite the fact that the collective price of the items falls below the Energy Star Sales Tax Holiday threshold.

**Note:** Many high-efficiency toilets are sold in two parts, with the tank and bowl sold separately. When components combine to make a WaterSense labeled product, tanks should include the words, “When used in combination with (bowl model number/name)” in close proximity to the label, and similarly with bowl labeling. If a customer purchases the bowl and tank separately, and one of the two is not affixed with the WaterSense label, the items will not qualify as a WaterSense designated item. Similarly, if a customer purchases a WaterSense designated bowl or tank individually, without purchasing the other component, the purchased item will not qualify for exemption.

### Threshold

When the sales price of an Energy Star or WaterSense qualified item is greater than the ceiling threshold amount of \$2,500, sales or use tax is due on the entire charge for the item. The sales price is not reduced by the threshold amount.

**Example:** An Energy Star qualified refrigerator is sold for \$2,800. The refrigerator satisfies Virginia’s definition for an Energy Star qualified item, but does not qualify for the exemption, since it exceeds the price threshold by \$300. The entire sales price of the refrigerator is subject to tax, and not just the amount that exceeds the \$2,500 threshold.

## Dealer Participation and Administration

### Participation in the sales tax holiday

#### Exempt Energy Star and WaterSense products

During the sales tax holiday, the law exempts qualifying Energy Star and WaterSense products from the Retail Sales and Use Tax. 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 TAX 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.

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### Absorption of the tax

During the sales tax holiday, dealers are permitted to 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 do not carry exempt items can both elect to absorb the tax. This provision is **voluntary**; however, any tax absorbed on non-qualifying items must be paid to the Tax Commissioner. Dealers are not required to absorb the tax on those items that do not qualify for the sales tax exemption, but are permitted to do so if they wish. (See pages 4-5 of these guidelines for additional information on dealer absorption).

### Mail order, telephone, and Internet sales

Items purchased over the Internet, 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

### 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. Even though 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.

### 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 will not be considered as available for immediate shipment, and the transaction will not be eligible for the holiday sales tax exemption.

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### Rentals

Rental items are not eligible for the exemption, regardless of whether the items are rented 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 qualified Energy Star or WaterSense products during the sales tax holiday period. Retailers are required to 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 taxed and those that were not taxed. The records may be in the form of register tapes, cash tickets, electronic records, or whatever records 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 Energy Star or WaterSense items sold during the sales tax holiday period in their total gross receipts and on the line on which all other exempt sales are reported on the monthly report (Form ST-9).

While retailers are not required to obtain an exemption certificate or other certification from purchasers of qualified Energy Star or WaterSense products, retailers are required to make a good faith effort to ensure that 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 that the item or items in question are being purchased for noncommercial home or personal use. Purchases made 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.

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### **Energy Star Income Tax Deduction**

Va. Code § 58.1-322 allows for a deduction equal to 20% of the retail 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 Energy Star Sales Tax Holiday. Any rules listed within these guidelines shall apply only to the Energy Star and WaterSense Sales Tax Holiday exemption period, and have no bearing on the income tax deduction provided on certain energy efficient items.

### **ADDITIONAL INFORMATION**

These guidelines are available on-line in the Tax Policy Library section of TAX's Web site, located at [www.tax.virginia.gov](http://www.tax.virginia.gov) and TAX's specific holiday site, [www.tax.virginia.gov/salestaxholiday](http://www.tax.virginia.gov/salestaxholiday). For additional information, please contact the Department's Customer Service Section at (804) 367-8037, or send inquiries to the Department of Taxation, P.O. Box 715, Richmond, Virginia 23218-0715.

### **Approved:**

Janie E. Bowen  
Tax Commissioner