

HOUSE BILL 1948

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 67.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-393, is amended by deleting the section in its entirety and by substituting instead the following:

Section 67-6-393.

(a) The exemption provided by this section shall be known as a "sales tax holiday." There is exempt from the tax imposed by this chapter the following items of tangible personal property, if sold between 12:01 a.m. on the first Friday of August and 11:59 p.m. the following Sunday:

(1) Clothing with a sales price of one hundred dollars (\$100) or less per item;

(2) School supplies with a sales price of one hundred dollars (\$100) or less per item;

(3) School art supplies with a sales price of one hundred dollars (\$100) or less per item; and

(4) Computers with a sales price of one thousand seven hundred dollars (\$1,700) or less per item.

(b) The exemption provided by this section does not apply to the following:

(1) Computer software;

(2) Clothing accessories or equipment;

(3) Protective equipment;

(4) Sport or recreational equipment;

- (5) School instructional material;
- (6) School computer supplies;
- (7) Any item for use in a trade or business;
- (8) The lease or rental of any item; or
- (9) Video game consoles.

(c) Each retailer making exempt sales under this section shall report the amount of such sales to the commissioner on the retailer's sales and use tax returns.

(d) The exemption provided in this section shall be subject to the following provisions:

(1) Layaway Sales. A sale of eligible property under a layaway sale qualifies for exemption, if:

(A) Final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or

(B) The purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period;

(2) Coupons and Discounts. A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold. A coupon that reduces the sales price is treated as a discount, if the seller is not reimbursed for the coupon amount by a third party. If a discount applies to the total amount paid by a purchaser, rather than to the sales price of a particular item, and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales price of the taxable property compared to the total sales price of all property sold in that same transaction;

(3) Splitting of Items Normally Sold Together. Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, each shoe of a pair of shoes cannot be sold separately so that the sales price of each shoe is within a sales tax holiday price threshold;

(4) Rain Checks. A rain check allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check shall qualify for the exemption, regardless of when the rain check was issued. Issuance of a rain check during the exemption period shall not qualify eligible property for the exemption, if the property is actually purchased after the exemption period;

(5) Exchanges. The procedure for an exchange regarding a sales tax holiday is as follows:

(A) If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible 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;

(B) If a customer purchases an item of eligible property 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, the appropriate sales tax is due on the sale of the newly purchased item; and

(C) If a customer purchases an item of eligible property 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 exemption period;

(6) Delivery Charges. Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment shall be considered a sale of eligible products. If the shipment includes eligible property and taxable property, including an eligible item with a sales price in excess of the price threshold, the seller should allocate the delivery charge by using:

(A) A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment;
or

(B) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller shall tax the percentage of the delivery charge allocated to the taxable property, but does not have to tax the percentage allocated to the eligible property;

(7) Order Date and Back Orders. For the purpose of a sales tax holiday, eligible property qualifies for exemption, if:

(A) The item is both delivered to and paid for by the customer during the exemption period; or

(B) 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. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an “in date” stamp on a mail order or assignment of an “order number” to a telephone order. An order is for immediate shipment when 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 to, or on back order by, the seller;

(8) Returns. For a sixty-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 sixty-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 sixty-day period is not intended to change a seller's policy on the time period during which the seller will accept returns; and

(9) 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.

(e) For purposes of subsection (d), “eligible property” means an item of a type, such as clothing, that qualifies for exemption under this section.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.