

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 58.1-2900 and 58.1-2901 of the Code of Virginia, relating to the electric utility consumption tax.*

[H 1134]

Approved

**Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-2900 and 58.1-2901 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-2900. (Effective January 1, 2001) Imposition of tax.

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 and subject to the adjustments authorized by subdivision A 5 and by § 58.1-2902, a tax on the consumers of electricity in the Commonwealth based on kilowatt hours delivered by the incumbent distribution utility and used per month as follows:

1. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month not in excess of 2,500 kWh at the rate of \$0.00155 per kWh, as follows:

State	Special	Local
consumption	regulatory	consumption
tax rate	tax rate	tax rate
\$0.00102/kWh	\$0.00015/kWh	\$0.00038/kWh

2. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 2,500 kWh but not in excess of 50,000 kWh at the rate of \$0.00099 per kWh, as follows:

State	Special	Local
consumption	regulatory	consumption
tax rate	tax rate	tax rate
\$0.00065/kWh	\$0.00010/kWh	\$0.00024/kWh

3. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 50,000 kWh at the rate of \$0.00075 per kWh, as follows:

State	Special	Local
consumption	regulatory	consumption
tax rate	tax rate	tax rate
\$0.00050/kWh	\$0.00007/kWh	\$0.00018/kWh

4. The tax rates set forth in subdivisions 1, 2, and 3 are in lieu of and replace the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations furnishing heat, light or power by means of electricity.

5. The tax on consumers under this section shall not be imposed on consumers served by an electric utility owned or operated by a municipality if such municipal electric utility elects to have an amount equivalent to the tax added on the bill such utility (or an association or agency of which it is a member) pays for bundled or unbundled transmission service as a separate item. Such amount, equivalent to the tax, shall be calculated under the tax rate schedule as if the municipal electric utility were selling and collecting the tax from its consumers, adjusted to exclude the amount which represents the local consumption tax if the locality in which a consumer is located does not impose a license fee rate pursuant to § 58.1-3731, and shall be remitted to the Commission pursuant to § 58.1-2901. Municipal electric utilities may bundle the tax in the rates charged to their retail customers. Notwithstanding anything contained herein to the contrary, the election permitted under this subdivision shall not be exercised by any municipal electric utility if the entity to whom the municipal electric utility (or an association or agency of which it is a member) pays for transmission service is not subject to the taxing jurisdiction of the Commonwealth, unless such entity agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant to § 58.1-2901.

6. The tax on consumers set forth in subdivisions 1, 2, and 3 shall only be imposed in accordance with this subdivision on consumers of electricity purchased from a utility consumer services cooperative

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56 to the extent that such cooperative purchases, for the purpose of resale within the Commonwealth,  
 57 electricity from a federal entity that made payments in accordance with federal law (i) in lieu of taxes  
 58 during such taxable period to the Commonwealth and (ii) on the basis of such federal entity's gross  
 59 proceeds resulting from the sale of such electricity. Such tax shall instead be calculated by deducting  
 60 from each of the respective tax amounts calculated in accordance with subdivisions 1, 2, and 3 an  
 61 amount equal to the calculated tax amount multiplied by the ratio of the total cost of power supplied by  
 62 the federal entity, including facilities rental, during the taxable period to the utility consumer services  
 63 cooperative's total operating revenue within the Commonwealth during the taxable period. The State  
 64 Corporation Commission may audit the records and books of any utility consumer services cooperative  
 65 that determines the tax on consumers in accordance with this subdivision to verify that the tax imposed  
 66 has been correctly determined and properly remitted.

67 B. The tax authorized by this chapter shall not apply to municipalities' own use or to use by  
 68 divisions or agencies of federal, state and local governments.

69 § 58.1-2901. (Effective January 1, 2001) Collection and remittance of tax.

70 A. The service provider shall collect the tax from the consumer by adding it as a separate charge to  
 71 the consumer's monthly statement. Until the consumer pays the tax to such provider, the tax shall  
 72 constitute a debt of the consumer to the Commonwealth. If any consumer refuses to pay the tax, the  
 73 service provider shall notify the Commission and/or localities of the names and addresses of such  
 74 consumers. After the consumer pays the tax to the service provider, the taxes collected shall be deemed  
 75 to be held in trust by such provider until remitted to the Commission and/or localities.

76 When determining the amount of tax to collect from consumers of an electric utility that is a  
 77 cooperative which purchases, for the purpose of resale within the Commonwealth, electricity from a  
 78 federal entity that made payments during such taxable period to the Commonwealth in lieu of taxes in  
 79 accordance with a federal law requiring such payments to be calculated on the basis of such federal  
 80 entity's gross proceeds from the sale of electricity, the service provider shall deduct from each of the  
 81 respective tax amounts calculated in accordance with § 58.1-2900 an amount equal to the calculated tax  
 82 amounts multiplied by the ratio that the total cost of the power, including facilities rental, supplied by  
 83 said federal entity to said cooperative for resale within the Commonwealth bears to said cooperative's  
 84 total operating revenue within the Commonwealth for the taxable period. The State Corporation  
 85 Commission may audit the records and books of said cooperative to verify that the tax imposed by this  
 86 chapter has been correctly determined and properly remitted.

87 B. A service provider shall remit monthly to the Commission the amount of tax paid during the  
 88 preceding month by the service provider's consumers, except for (i) amounts added on the bills to  
 89 utilities owned and operated by municipalities which are collected by the entity providing transmission  
 90 directly to such utilities (or an association or agency of which the municipality is a member), which  
 91 they shall remit directly to the Commission and (ii) the portion which represents the local consumption  
 92 tax, which portion shall be remitted to the locality in which the electricity was consumed and shall be  
 93 based on such locality's license fee rate which it imposed. Amounts of the tax that are added on the bills  
 94 to utilities owned and operated by municipalities, which are collected by the entity providing  
 95 transmission directly to such utilities (or an association or agency of which the municipality is a  
 96 member), shall be remitted monthly by such entity to the Commission, except that the portion which  
 97 represents the local consumption tax shall be remitted to the locality in which the electricity was  
 98 consumed and shall be based on such locality's license fee rate which it imposed.

99 C. The electric utility consumption tax shall be remitted monthly, on or before the last day of the  
 100 succeeding month of collection. Those portions of the electric utility consumption tax that relate to the  
 101 state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion  
 102 that relates to the local consumption tax shall be remitted to the localities. Failure to remit timely will  
 103 result in a ten percent penalty.

104 D. Taxes on electricity sales in the year ending December 31, 2000, relating to the local consumption  
 105 tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C  
 106 shall commence on February 28, 2001.

107 E. For purposes of this section, "service provider" means the person who delivers electricity to the  
 108 consumer.

109 F. The portion of the electric utility consumption tax relating to the local consumption tax replaces  
 110 and precludes localities from imposing a license tax in accordance with § 58.1-3731 and the business,  
 111 professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) on electric  
 112 suppliers subsequent to December 31, 2000, except as provided in subsection D. If the license fee rate  
 113 imposed by a locality is less than the equivalent of the local consumption tax rate component of the  
 114 consumption tax paid under subsection A of § 58.1-2900, the excess collected by the Commission shall  
 115 constitute additional state consumption tax revenue and shall be remitted by the Commission to the state  
 116 treasury.

**117** G. The Department of Taxation may audit the books and records of any electric utility owned and  
**118** operated by a municipality (or an association or agency of which the municipality is a member) to  
**119** verify that the tax imposed by this chapter has been correctly determined and properly remitted to the  
**120** Commission.

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