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HOUSE BILL NO. 1494

House Amendments in [] — February 9, 2000

A BILL to amend and reenact §§ 58.1-3700.1 and 58.1-3703 of the Code of Virginia, relating to business, professional and occupational license tax; affiliated groups.

Patrons—Devolites, Albo, Bolvin, Drake, Hull, McClure, Rust and Wardrup; Senators: Barry and Byrne

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3700.1 and 58.1-3703 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3700.1. Definitions.

For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless otherwise required by the context:

"Affiliated group" means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

b. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

3. *Two or more entities if such entities satisfy the requirements in subdivisions 1 and 2 of this definition as if they were corporations and the ownership interests therein were stock.*

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business:

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60 (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or
61 (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or
62 business.

63 "Definite place of business" means an office or a location at which occurs a regular and continuous
64 course of dealing for thirty consecutive days or more. A definite place of business for a person engaged
65 in business may include a location leased or otherwise obtained from another person on a temporary or
66 seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite
67 place of business if there is no definite place of business maintained elsewhere and the person is not
68 subject to licensure as a peddler or itinerant merchant.

69 "Entity" or "entities" means businesses other than sole proprietorships that are structured as [
70 registered] partnerships, limited partnerships, limited liability partnerships, and limited liability
71 companies or corporations.

72 "Financial services" means the buying, selling, handling, managing, investing, and providing of
73 advice regarding money, credit, securities, or other investments.

74 "Gross receipts" means the whole, entire, total receipts, without deduction.

75 "License year" means the calendar year for which a license is issued for the privilege of engaging in
76 business.

77 "Professional services" means services performed by architects, attorneys-at-law, certified public
78 accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing
79 arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of
80 human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and
81 no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to
82 § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed
83 knowledge of some department of science or learning, gained by a prolonged course of specialized
84 instruction and study, is used in its practical application to the affairs of others, either advising, guiding,
85 or teaching them, and in serving their interests or welfare in the practice of an art or science founded on
86 it. The word "profession" implies attainments in professional knowledge as distinguished from mere
87 skill, and the application of knowledge to uses for others rather than for personal profit.

88 "Purchases" means all goods, wares and merchandise received for sale at each definite place of
89 business of a wholesale merchant. The term shall also include the cost of manufacture of all goods,
90 wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A
91 wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares
92 and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of
93 manufacture.

94 "Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or
95 appraisal of real property.

96 § 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of
97 authority.

98 A. The governing body of any county, city or town may charge a fee for issuing a license in an
99 amount not to exceed \$100 for any locality with a population greater than 50,000, fifty dollars for any
100 locality with a population of 25,000 but no more than 50,000 and thirty dollars for any locality with a
101 population smaller than 25,000. Such governing body may levy and provide for the assessment and
102 collection of county, city or town license taxes on businesses, trades, professions, occupations and
103 callings and upon the persons, firms and corporations engaged therein within the county, city or town
104 subject to the limitations in (i) subsection B of this section and (ii) subsection A of § 58.1-3706,
105 provided such tax shall not be assessed and collected on any amount of gross receipts of each business
106 upon which a license fee is charged. Any county, city or town with a population greater than 50,000
107 shall reduce the fee to an amount not to exceed fifty dollars by January 1, 2000. The ordinance
108 imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

109 B. Any county, city or town by ordinance may exempt in whole or in part from the license tax the
110 design, development or other creation of computer software for lease, sale or license.

111 C. No county, city or town shall impose a license fee or levy any license tax:

112 1. On any public service corporation or any motor carrier, common carrier, or other carrier of
113 passengers or property formerly certified by the Interstate Commerce Commission or presently registered
114 for insurance purposes with the Surface Transportation Board of the United States Department of
115 Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by
116 other provisions of law;

117 2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the
118 planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and
119 sheds of such county, city or town, provided such products are grown or produced by the person
120 offering them for sale;

121 3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other

publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

8. [Repealed.]

9. On or measured by receipts for management, accounting, or administrative services provided on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by a ~~corporation~~ *an entity* which is a member of an affiliated group of ~~corporations~~ *entities* from other members of the same affiliated group. This exclusion shall not exempt affiliated ~~corporations~~ *entities* from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated ~~corporation~~ *entity* on those sales by the affiliated ~~corporation~~ *entity* to a nonaffiliated ~~person, company, or corporation~~ *entity*, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated ~~corporation~~ *entity*. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated ~~person, company, or corporation~~ *entity*. As used in this subdivision, the term "sales by the affiliated ~~corporation~~ *entity* to a nonaffiliated ~~person, company or corporation~~ *entity*" means sales by the affiliated ~~corporation~~ *entity* to a nonaffiliated ~~person, company or corporation~~ *entity* where goods sold by the affiliated ~~corporation~~ *entity* or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated ~~person, company or corporation~~ *entity*;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped, or a nominee of the Department, as set forth in § 63.1-164;

15. [Expired.]

16. [Repealed.]

17. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;

18. (a) On or measured by receipts of a charitable nonprofit organization except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "charitable nonprofit organization" means an organization which is described in Internal Revenue Code § 501 (c) (3) and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning.

(b) On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal

183 income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations; or
184 19. On any venture capital fund or other investment fund, except commissions and fees of such
185 funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality
186 in which the real estate is located provided the locality is otherwise authorized to tax such businesses
187 and rental of real estate.