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HOUSE BILL NO. 906

Offered January 24, 2000

A BILL to amend and reenact §§ 30-19.05 and 30-19.1:3 of the Code of Virginia, relating to legislative consideration of sales and use tax exemptions.

Patrons—Cranwell and Parrish

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-19.05 and 30-19.1:3 of the Code of Virginia are amended and reenacted as follows:

§ 30-19.05. Legislative consideration of certain exemptions from the retail sales and use tax.

A. When any bill establishing, or expanding, extending the expiration date of, or renewing an exemption or exclusion from the retail sales and use tax under the categories of educational (§ 58.1-609.4), medical-related (§ 58.1-609.7), civic and community service (§ 58.1-609.8), cultural (§ 58.1-609.9), and miscellaneous (§ 58.1-609.10) pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 is referred to a committee of the General Assembly, the chairman of the committee shall require, prior to consideration by the committee of the bill, a determination in writing by the Department of Taxation that the information required by this section has been provided and, if applicable, that the Department has determined that the requirements of subsection D have been satisfied. The Department of Taxation shall issue a preliminary determination, by January 5 prior to the session of the General Assembly in which such bill may to be considered, of such matters. If such information is incomplete, the Department shall explain the nature of the deficiencies. A copy of the preliminary determination shall be provided to the Division of Legislative Services as provided in subsection B of § 30-19.1:3.

B. A member of the General Assembly intending to patron a bill (i) establishing or expanding applicable to a nonprofit organization which establishes or expands an exemption or exclusion from the retail sales and use tax under the categories of educational (§ 58.1-609.4), medical-related (§ 58.1-609.7), civic and community service (§ 58.1-609.8), cultural (§ 58.1-609.9), and miscellaneous (§ 58.1-609.10) shall by the November 1 or (ii) extending the expiration date of or renewing an exemption or exclusion from the retail sales and use tax shall by the July 1, preceding the next regular session during which such bill may be considered, submit to the Department of Taxation the following information:

1. Estimate of state and local revenues which will be foregone as a direct result of the exemption;
2. Beneficiaries of the exemption;
3. Direct or indirect local, state or federal government assistance received by the person seeking exemption;
4. The extent to which the person, property, service or industry is exempt from the retail sales and use tax in other states;
5. Any external statutory, constitutional or judicial mandates in favor of the exemption;
6. Other state taxes to which the person, property, service or industry is subject;
7. Similar taxpayers who are not entitled to a retail sales and use tax exemption; and
8. Other criteria, facts or circumstances which may be relevant to the request for exemption.

C. In addition to the information required by subsection B, the member of the General Assembly intending to patron a bill applicable to a nonprofit organization which establishes, expands, extends the expiration date of or renews an exemption or exclusion from the retail sales and use tax under the categories of educational (§ 58.1-609.4), medical-related (§ 58.1-609.7), civic and community service (§ 58.1-609.8), cultural (§ 58.1-609.9), and miscellaneous (§ 58.1-609.10) shall submit to the Department of Taxation, with the information required by subsection B, the following information:

19. Exemption from federal income taxation under either § 501 (c) (3) or § 501 (c) (4) of the Internal Revenue Code, as evidenced by a ruling or other such documentation;

210. The purpose or purposes for which the entity is organized and operated, and the functions and services it exists to deliver, provided to Virginia citizens, along with an explanation of such services;

311. Proof that no more than forty percent of the organization's gross annual revenue, under generally accepted accounting principles, is spent on general administration, including salaries and fundraising;

412. The location of the organization's financial records available for public inspection and certification that such records are true, accurate, and complete. Salaries, including all benefits, of the five most highly compensated employees shall be specifically disclosed. Organizations whose gross annual revenue is \$250,000 or greater shall be subject to an annual financial audit performed by an

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60 independent certified public accountant. Such audit report or reports shall be attached to the
61 organization's application for tax exempt status;

62 513. Proof of compliance with Chapter 5 (§ 57-48 et seq.) of Title 57 from organizations subject to
63 it;

64 614. A volunteer board of directors with names and addresses provided.

65 DC. An organization for which the information described in subsection CB is required to be
66 submitted shall not be eligible for exemption from the retail sales and use tax unless the Department of
67 Taxation has determined that:

68 1. The organization is exempt from federal income taxation under either § 501 (c) (3) or § 501 (c)
69 (4) of the Internal Revenue Code;

70 2. No more than forty percent of the organization's gross annual revenue, under generally accepted
71 accounting principles, is spent on general administration, including salaries and fundraising;

72 3. If applicable, the organization is in compliance with the provisions of Chapter 5 (§ 57-48 et seq.)
73 of Title 57; and

74 4. The requested exemption is applicable only to purchases by the organization of tangible personal
75 property; however, this provision shall not apply with respect to the extension or renewal of an existing
76 sales and use tax exemption.

77 The failure of such an organization to maintain compliance with the provisions of this subsection
78 shall constitute grounds for revocation by the Department of its exemption from the retail sales and use
79 tax pursuant to §§ 58.1-608.2 and 58.1-623.1. Under circumstances evidencing a willful disregard or
80 misuse of such tax exempt status, the Tax Commissioner may revoke an organization's exemption back
81 to the date of noncompliance, subject to the applicable statute of limitations. No such retroactive
82 revocation shall be implemented unless the Tax Commissioner has first utilized the procedure prescribed
83 in subsection A of § 58.1-623.1.

84 ED. By July 1, 2000, any nonprofit organization, other than a nonprofit church, that has qualified for
85 a sales and use tax exemption under §§ 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9 or § 58.1-609.10,
86 shall submit to the Department of Taxation the information set forth in subsections B and C, for
87 consideration of the extension of such exemption during the 2001 Session of the General Assembly.
88 Such organizations shall thereafter update such information in accordance with the following schedule:
89 (i) organizations exempt under § 58.1-609.4 shall submit updated information by July 1, 2001, for
90 consideration of the extension of such exemption during the 2002 Session of the General Assembly; (ii)
91 organizations exempt under § 58.1-609.7 shall submit updated information by July 1, 2002, for
92 consideration of the extension of such exemption during the 2003 Session of the General Assembly; (iii)
93 the first half of organizations exempt under § 58.1-609.8, as determined by the Department, shall submit
94 updated information by July 1, 2003, for consideration of the extension of such exemption during the
95 2004 Session of the General Assembly; (iv) the second half of organizations exempt under § 58.1-609.8,
96 as determined by the Department, shall submit updated information by July 1, 2004, for consideration of
97 the extension of such exemption during the 2005 Session of the General Assembly; and (v)
98 organizations exempt under §§ 58.1-609.9 and 58.1-609.10 shall submit updated information by July 1,
99 2005, for consideration of the extension of such exemption during the 2006 Session of the General
100 Assembly. Each organization shall submit updated information every five years after this initial update.
101 Failure to make a complete and timely submission of the required information shall constitute grounds
102 for revocation by the Department of the organization's exemption from the retail sales and use tax.

103 FE. Any nonprofit organization, other than a nonprofit church, that has qualified for a sales and use
104 tax exemption under §§ 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9 or § 58.1-609.10, and which has
105 been determined by the Department of Taxation to have provided the information required by
106 subsections B and C and, if applicable, to have satisfied the requirements of subsection D, shall be
107 issued a numbered exemption certificate or certificate of registration pursuant to § 58.1-623. The
108 exemption certificate or certificate of registration shall expire upon the scheduled expiration of the
109 subdivision of the section under which the organization has qualified for the exemption, and a new
110 certificate thereafter shall be issued to each organization which submits the required updated information
111 and has been determined to have met the requirements of this section.

112 GF. For purposes of this section, the Department of Taxation and the Department of Agriculture and
113 Consumer Services shall be allowed to share information when necessary to supplement the information
114 required.

115 § 30-19.1:3. Limiting time for introduction and consideration of retail sales and use tax exemption
116 bills.

117 A. Any bill establishing; or expanding; ~~extending the expiration date of; or renewing~~ an exemption or
118 exclusion from the retail sales and use tax pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 shall
119 be introduced for consideration by the General Assembly no later than the first calendar day of any
120 regular session of the General Assembly.

121 B. No bill described in subsection A of this section shall be drafted or otherwise prepared by the

122 Division of Legislative Services until the Division has received the Department of Taxation's preliminary
123 determination as provided by subsection A of § 30-19.05.
124 C. Any bill establishing or expanding a retail sales and use tax exemption for nonprofit organizations
125 under §§ 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9 or § 58.1-609.10 shall be considered by the
126 General Assembly only in regular sessions convened in even-numbered years.
127 D. The provisions of subsections A, B, and C of this section shall not apply with respect to any bill
128 delaying the effective date of any retail sales and use tax exemption.