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HOUSE BILL NO. 699

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 3.1-1111, 30-133, 46.2-623, 58.1-611.1 and 58.1-3912 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 22.1, consisting of sections numbered 58.1-550 through 58.1-553, and to repeal § 15.2-1636.20, Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of Virginia, Chapter 35.1 (§§ 58.1-3523 through 58.1-3536) of Title 58.1 of the Code of Virginia, and § 58.1-3916.01 of the Code of Virginia, the amended, added and repealed sections relating to state and local taxation.

 Patrons—Byron and Drake

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-1111, 30-133, 46.2-623, 58.1-611.1 and 58.1-3912 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 22.1, consisting of sections numbered 58.1-550 through 58.1-553 as follows:

§ 3.1-1111. Tobacco Indemnification and Community Revitalization Fund; tax credits for technology industries in tobacco-dependent localities.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B of this section and by § 32.1-360 and shall be included in general fund revenue calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.

B. There is created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter; however, starting with the fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may deposit moneys from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.15, for purposes of funding the tax credits provided in §§ 58.1-439.13 and 58.1-439.14 and the grants provided in § 58.1-439.17. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

C. The obligations of the Commission shall not be a debt or grant or loan of credit of the Commonwealth of Virginia, and the Commonwealth shall not be liable thereon, nor shall such obligations be payable out of any funds other than those credited to the Fund.

§ 30-133. Duties and powers generally.

A. The Auditor of Public Accounts shall audit all the accounts of every state department, officer, board, commission, institution or other agency handling any state funds. In the performance of such duties and the exercise of such powers he may employ the services of certified public accountants, provided the cost thereof shall not exceed such sums as may be available out of the appropriation provided by law for the conduct of his office.

B. As part of his normal oversight responsibilities, the Auditor of Public Accounts shall incorporate into his audit procedures and processes a review process to ensure that the Commonwealth's payments for qualifying vehicles, as defined in § 58.1-3523, are consistent with the provisions of §§ 58.1-3525 and 58.1-3526. The Auditor of Public Accounts shall report to the Governor and the Chairmen of the Senate Finance Committee annually any material failure by a locality or the Commonwealth to comply with the provisions of Chapter 35.1 (§ 58.1-3523 et seq.) of Title 58.1.

CB. The Auditor of Public Accounts when called upon by the Governor shall examine the accounts of any institution maintained in whole or in part by the Commonwealth and, upon the direction of the Comptroller, shall examine the accounts of any officer required to settle his accounts with him; and

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59 upon the direction of any other state officer at the seat of government he shall examine the accounts of
60 any person required to settle his accounts with such officer.

61 DC. Upon the written request of any member of the General Assembly, the Auditor of Public
62 Accounts shall furnish the requested information and provide technical assistance upon any matter
63 requested by such member.

64 ED. In compliance with the provisions of the federal Single Audit Act Amendments of 1996, Public
65 Law 104-156, the Joint Legislative Audit and Review Commission may authorize the Auditor of Public
66 Accounts to audit biennially the accounts pertaining to federal funds received by state departments,
67 officers, boards, commissions, institutions or other agencies.

68 § 46.2-623. Statements in application.

69 A. Every application for a certificate of title shall contain (i) a statement of the applicant's title and
70 of all liens or encumbrances on the vehicle and the names and addresses of all persons having any
71 interest in the vehicle and the nature of every interest in the vehicle; (ii) the Social Security number, if
72 any, of the owner and, if the application is in the name of an employer for a business vehicle, the
73 employer's identification number assigned by the United States Internal Revenue Service; and (iii) a
74 brief description of the vehicle to be registered, including the name of the maker, the vehicle
75 identification or serial number and, when registering a new vehicle, the date of sale by the manufacturer
76 or dealer to the person first operating the vehicle.

77 B. Not later than July 15, 1998, the lessor of a qualifying vehicle, as defined in § 58.1-3523, shall
78 send a report to the Department for each such qualifying vehicle it was leasing as of July 1, 1998, and
79 has leased between January 1, 1998, and June 30, 1998, containing (i) the name and address of the
80 lessee as it appears in the lease contract; (ii) the social security number of the lessee; and (iii) the
81 registration number of the vehicle as described under Article 1 (§ 46.2-600 et seq.) of Chapter 6 of Title
82 46.2.

83 C. Beginning with August 1998, such lessor shall send a monthly report to the Department, by the
84 fifteenth day of the month or such later day as may be prescribed in the guidelines promulgated under
85 § 58.1-3532, listing any changes, additions or deletions to the information provided under subsection B
86 as of the last day of the preceding month.

87 DB. The application shall contain such additional information as may be required by the Department.

88 Article 22.1.

89 Local Distribution of Individual Income Tax Revenues.

90 § 58.1-550. Definitions.

91 As used in this chapter:

92 "Appropriate growth rate" means the average of the statewide growth rate for tangible personal
93 property taxation of privately owned motor vehicles used for nonbusiness purposes for each of the three
94 tax years during the period beginning on January 1, 2001, and ending on December 31, 2004, plus one
95 percent.

96 "Commissioner of the revenue" means the same as that set forth in § 58.1-3100. For purposes of this
97 chapter, in a county or city that does not have an elected commissioner of the revenue, "commissioner
98 of the revenue" means the officer who is primarily responsible for assessing motor vehicles for the
99 purposes of tangible personal property taxation.

100 "Due date" means the date during each tax year that is consistent with the treasurer's receipt of
101 tangible personal property tax payments on qualifying vehicles as of January 1, 1998.

102 "Effective tax rate" means the tax rate in effect in the locality on July 1, 1997, or August 1, 1997,
103 whichever rate is greater, imposed by a locality on tangible personal property on the applicable class of
104 tangible personal property multiplied by the assessment ratio.

105 "Leased" means leased by a natural person as lessee and used for nonbusiness purposes.

106 "Locality's share" means the percentage of individual income tax liability attributable to the residents
107 of each locality, as determined by the Tax Commissioner. In applying the "locality's share" to this
108 chapter, the Tax Commissioner may use data from the most recently completed analysis of individual
109 income tax liability attributable to the residents of each locality.

110 "Privately owned" means any vehicle owned by a natural person and used for nonbusiness purposes.

111 "Qualifying vehicle" means any passenger car, motorcycle, and pickup or panel truck, as those terms
112 are defined in § 46.2-100, that is determined by the commissioner of the revenue of the county or city in
113 which the vehicle has situs as provided by § 58.1-3511 to be (i) privately owned or (ii) leased pursuant
114 to a contract requiring the lessee to pay the tangible personal property tax on such vehicle.

115 "Tangible personal property tax" means the tax levied pursuant to Article 1 (§ 58.1-3500 et seq.) of
116 Chapter 35 of this title on the value of qualifying vehicles.

117 "Treasurer" means the same as that set forth in § 58.1-3123, when used herein with respect to a
118 county or city. When used herein with respect to a town, "treasurer" means the officer who is primarily
119 responsible for the billing and collection of tangible personal property taxes levied upon motor vehicles

by such town, and means the treasurer of the county or counties in which such town is located if such functions are performed for the town by the county treasurer or treasurers.

"Used for nonbusiness purposes" means the preponderance of use is for other than business purposes. The preponderance of use for other than business purposes shall be deemed not to be satisfied if: (i) the motor vehicle is expensed on the taxpayer's federal income tax return pursuant to Internal Revenue Code § 179; (ii) more than fifty percent of the basis for depreciation of the motor vehicle is depreciated for federal income tax purposes; or (iii) the allowable expense of total annual mileage in excess of fifty percent is deductible for federal income tax purposes or reimbursed pursuant to an arrangement between an employer and employee.

"Value" means the fair market value determined by the method prescribed in § 58.1-3503 and used by the locality as of August 1, 1997, in valuing the qualifying vehicle.

§ 58.1-551. Local Distributions of Revenue.

A. Beginning in calendar year 2005, the Commonwealth shall distribute to each county and city the greater of (i) each county and city's share of fifteen percent of all revenues derived from the tax imposed under § 58.1-320 from the prior fiscal year, or (ii) an amount of revenue collected by the county or city imposed for tax year 2004 from the tangible personal property taxation of privately owned motor vehicles used for nonbusiness purposes at the effective tax rate in effect in the county or city on July 1, 1997, or August 1, 1997, whichever rate is greater, indexed annually by the appropriate growth rate.

B. In the first calendar year in which a county or city receives its share of fifteen percent of all revenues derived from the tax imposed under § 58.1-320 from the prior fiscal year and such distribution exceeds by two percent an amount of revenue collected by the county or city imposed for calendar year 2004 from the tangible personal property taxation of privately owned motor vehicles used for nonbusiness purposes at the effective tax rate in effect in the county or city on July 1, 1997, or August 1, 1997, whichever rate is greater, indexed annually by the appropriate growth rate, then such county or city will receive the fifteen percent of all revenues derived from an income tax on individuals from the prior fiscal year for all subsequent calendar years.

C. Such payments to counties are subject to the qualifications that in any county wherein is situated any incorporated town that imposed a tax on qualifying vehicles pursuant to Chapter 35 (§ 58.1-3500 et seq.) of this title as of July 1, 1997, the distribution of revenue under this section shall be divided between the county and the incorporated town or towns in the following manner:

a. Fifty percent of the county's distribution shall be divided between the county and the town or towns located within such county based on each town's share of the total county population.

b. Fifty percent of the county's distribution remains with the county. If there are no towns within the county, the entire 100 percent of the county's distribution remains with the county.

§ 58.1-552. Dates of Distributions.

A. If a locality has one due date during each tax year and such due date is on or before June 30, then the locality will receive its appropriate distribution, as determined in § 58.1-551, by May 15 of each year.

B. If a locality has one due date during each tax year and such due date is after June 30, then the locality will receive its appropriate distribution, as determined in § 58.1-551, by November 15 of each year.

C. If a locality has two due dates during each tax year and one such due date is on or before June 30 and the other is after June 30, then the locality will receive fifty percent of its appropriate distribution, as determined in § 58.1-551, by May 15 of each year, and fifty percent of its appropriate distribution, as determined in § 58.1-551, by November 15 of each year.

§ 58.1-553. Reconciliation of amounts paid to counties, cities, and towns.

The Department of Motor Vehicles and each treasurer shall reconcile the amount paid by the Commonwealth to such treasurer pursuant to former Chapter 35.1 (§ 58.1-3523 et seq.) of this title for tax year 2004. The Department of Motor Vehicles may use information described in subsections C and E of § 58.1-3526 of former Chapter 35.1 and any other source or data it deems appropriate in making such a reconciliation. Such reconciliation shall be completed by April 1, 2005, at which time the Commissioner of the Department of Motor Vehicles shall certify such reconciled amounts to the Tax Commissioner. If the Department of Motor Vehicles determines that the correct amount has not been paid to such treasurer, the Department shall (i) for any underpayments, increase the first payment made under § 58.1-551 by such underpayment; or (ii) for any overpayments, reduce the first payment made under § 58.1-551 by such overpayment. If any reconciliation is not completed prior to the first payment made under § 58.1-551, then the appropriate adjustments shall be made to the next payment to the prospective locality. The guidelines promulgated under § 58.1-3532 of former Chapter 35.1 shall establish procedures for such reconciliations.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction

181 Program.

182 A. Subject to the conditions of subsections D and E, the tax imposed by §§ 58.1-603 and 58.1-604
183 on food purchased for human consumption shall be levied and distributed as follows:

184 1. From January 1, 2000, through March 31, 2001, the tax rate on such food shall be three percent
185 of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from
186 the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii)
187 the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C
188 and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be
189 used for general fund purposes.

190 2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and one-half
191 percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue
192 from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
193 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
194 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall
195 be used for general fund purposes.

196 3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of
197 the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the
198 tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the
199 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and
200 D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be used for
201 general fund purposes.

202 4. On and after April 1, 2003, the tax rate on such food shall be one and one-half percent of the
203 gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax
204 at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the
205 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and
206 D of § 58.1-638.

207 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
208 consumption pursuant to §§ 58.1-605 and 58.1-606.

209 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
210 defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted
211 pursuant to that Act, except it shall not include seeds and plants which produce food for human
212 consumption.

213 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased
214 for human consumption for any twelve-month period beginning on or after April 1, 2001, shall not be
215 reduced below the rate then in effect for the Commonwealth's current fiscal year if:

216 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction
217 is contemplated in subsection A do not exceed the official general fund revenue estimates for such
218 preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act,
219 by at least one percent; or

220 2. ~~Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have~~
221 ~~occurred during the then current fiscal year. The general fund revenue forecast provided annually by the~~
222 ~~Governor in December pursuant to § 2.2-1503 indicates that general fund revenues, excluding transfers,~~
223 ~~for any fiscal year will be less than five percent greater than general fund revenues for the immediately~~
224 ~~preceding fiscal year; or~~

225 3. *The general fund revenue forecast provided annually by the Governor in December pursuant to*
226 *§ 2.2-1503 indicates that total general fund revenues available for appropriation, including transfers, for*
227 *either of the fiscal years covered by the general appropriation act in effect at the time will be less than*
228 *the general fund appropriations for such fiscal year or years.*

229 E. If the tax rate on food purchased for human consumption remains the same for the period January
230 1, 2000, through March 31, 2001, and the subsequent twelve-month period beginning on April 1, 2001,
231 or with respect to any consecutive twelve-month periods beginning on and after April 1, 2001, the tax
232 rate on such food shall remain the same unless none of the conditions described in subsection D have
233 occurred, in which event the tax rate on food purchased for human consumption for the immediately
234 following twelve-month period shall be equal to the next lowest tax rate listed in subsection A.

235 F. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food
236 Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction
237 Program as established by this section, and as may be provided for in the general appropriation act. For
238 the purpose of the Comptroller's preliminary and final annual reports required by § 2.2-813, all balances
239 remaining in the Fund on June 30 of each year shall be considered a portion of the fund balance of the
240 general fund of the state treasury.

241 § 58.1-3912. Treasurers to mail certain bills to taxpayers; penalties; electronic transmission.

242 A. The treasurer of every city and county shall, as soon as reasonably possible in each year, but not

later than fourteen days prior to the due date of the taxes, send or cause to be sent by United States mail to each taxpayer assessed with taxes and levies for that year a bill or bills setting forth the amounts due. The treasurer may elect not to send a bill amounting to twenty dollars or less as shown by an assessment book in such treasurer's office. The treasurer may employ the services of a mailing service or other vendor for fulfilling the requirements of this section. The failure of any such treasurer to comply with this section shall be a Class 4 misdemeanor. Such treasurer shall be deemed in compliance with this section as to any taxes due on real estate if, upon certification by the obligee of any note or other evidence of debt secured by a mortgage or deed of trust on such real estate that an agreement has been made with the obligor in writing within the mortgage or deed of trust instrument that such arrangements be made, he mails the bill for such taxes to the obligee thereof. Upon nonpayment of taxes by either the obligee or obligor, a past-due tax bill will be sent to the taxpayer. No governing body shall publish the name of a taxpayer in connection with a tax debt for which a bill was not sent, without first sending a notice of deficiency to his last known address at least two weeks before such publication.

B. The governing body of any county, city or town may attach to or mail with all real estate and tangible personal property tax bills, prepared for taxpayers in such locality, information indicating how the tax rate charged upon such property and revenue derived therefrom is apportioned among the various services and governmental functions provided by the locality.

C. Notwithstanding the provisions of subsection A of this section, in any county which has adopted the urban county executive form of government, and in any county contiguous thereto which has adopted the county executive form of government, tangible personal property tax bills shall be mailed not later than thirty days prior to the due date of such taxes.

D. Notwithstanding the provisions of subsection A of this section, any county and town, the governing bodies of which mutually agree, shall be allowed to send, to each taxpayer assessed with taxes, by United States mail no later than fourteen days prior to the due date of the taxes, a single real property tax bill and a single tangible personal property tax bill.

E. Beginning with tax year 1999, in addition to all other information currently appearing on tangible personal property tax bills, each such bill shall state on its face (i) whether the vehicle is a qualifying vehicle as defined in § 58.1-3523; (ii) a deduction for the amount to be paid by the Commonwealth as determined by § 58.1-3524; (iii) the vehicle's registration number pursuant to § 46.2-604; (iv) the amount of tangible personal property tax levied on the vehicle; and (v) if the locality prorates personal property tax pursuant to § 58.1-3516, the number of months for which a bill is being sent.

F. Beginning with tax year 1999 and through the end of tax year 2002, the treasurer shall include a statement, prepared by the Department, with or as part of the tangible personal property tax bills for such qualifying vehicles. The statement shall explain how the deduction for the percentage of the reimbursable amount was calculated, how the deduction shall be calculated in future years, and the taxpayer's liability for tangible personal property taxes on qualifying vehicles.

GE. Notwithstanding the provisions of subsection A, the treasurer, consistent with guidelines promulgated by the Department of Taxation implementing the provisions of subdivision 2 of § 58.1-1820, may convey, with the written consent of the taxpayer, any tax bill by electronic means chosen by the taxpayer, including without limitation facsimile transmission or electronic mail (e-mail), in lieu of posting such bill by first-class mail. The treasurer conveying a bill by means authorized in this subsection shall maintain a copy (in written form or electronic media) of the bill reflecting the date of transmission until such time as the bill has been satisfied or otherwise removed from the treasurer's books by operation of law. Transmission of a bill pursuant to this subsection shall have the same force and effect for all purposes arising under this subtitle as mailing to the taxpayer by first-class mail on the date of transmission.

2. That § 15.2-1636.20, Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1, Chapter 35.1 (§§ 58.1-3523 through 58.1-3536) of Title 58.1, and § 58.1-3916.01 of the Code of Virginia are repealed.

3. That the provisions of this act shall become effective on January 1, 2005, if a constitutional amendment is effective prior to such date that exempts motor vehicles used for nonbusiness purposes from local personal property taxation and that provides for the distribution of at least fifteen percent of state revenues derived annually from the individual income tax to local governments.