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HOUSE BILL NO. 86

Offered January 9, 2002

Prefiled December 19, 2001

A BILL to amend and reenact § 58.1-611.1 of the Code of Virginia, relating to the Food Tax Reduction Program; definition of food for human consumption.

 Patron—Orrock

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-611.1 of the Code of Virginia is amended and reenacted as follows:**

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

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

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

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

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

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

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

C. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 1012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. *For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than eighty percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.*

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

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

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59 2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have
60 occurred during the then current fiscal year.

61 E. If the tax rate on food purchased for human consumption remains the same for the period January
62 1, 2000, through March 31, 2001, and the subsequent twelve-month period beginning on April 1, 2001,
63 or with respect to any consecutive twelve-month periods beginning on and after April 1, 2001, the tax
64 rate on such food shall remain the same unless none of the conditions described in subsection D have
65 occurred, in which event the tax rate on food purchased for human consumption for the immediately
66 following twelve-month period shall be equal to the next lowest tax rate listed in subsection A.

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