

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 610

An Act to amend and reenact §§ 58.1-3819, 58.1-3822, 58.1-3823, 58.1-3833 and 58.1-3842 of the Code of Virginia, relating to transient occupancy taxes and food and beverage taxes.

[S 684]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3819, 58.1-3822, 58.1-3823, 58.1-3833 and 58.1-3842 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3819. Transient occupancy tax.

A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied; however, ~~in any county having a population of no less than 40,000 and no greater than 45,000, and in any county which had adopted the county executive form of government and which is not contiguous to any county operating under the urban county executive form of government; any county having a population of no less than 12,600 and no greater than 12,800; any county having a population of no less than 29,100 and no greater than 29,300 as determined by the 1990 United States Census; any county having a population of no less than 29,750 and no greater than 31,000; any county having a population of no less than 57,000 and no greater than 57,450; any county having a population of no less than 60,000 and no greater than 62,500; in any county having a population of no less than 86,000 and no greater than 86,500; in any county having a population of no less than 44,000 and no greater than 45,700; and in York County, Albemarle County, Nelson County, Mecklenburg County, Gloucester County, Spotsylvania County, Stafford County, Loudoun County, Bedford County, Cumberland County, King George County, and Prince Edward County, such tax shall not exceed the rate of five percent. The revenues collected from that portion of the tax over two percent shall be designated and spent for promoting tourism, travel or business that generates tourism or travel in the locality. It is further provided that any county having a population of no less than 18,000 and no greater than 20,000; any county having a population of no less than 20,500 and no greater than 21,250; any county having a population of no less than 21,500 and no greater than 23,000; any county having a population of no less than 25,100 and no greater than 26,000; any county having a population of no less than 34,500 and no greater than 39,560; any county having a population of no less than 45,900 and no greater than 47,000; any county having a population of no less than 50,000 and no greater than 55,000; and any county which had adopted the county executive form of government and which is contiguous to any county operating under the urban county executive form of government; Rockbridge County, Caroline County, Dinwiddie County, Page County, Wythe County, James City County, Franklin County, Tazewell County, Augusta County, and Prince William County~~ may levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism, marketing of tourism or initiatives that, as determined in consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

B. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. In addition, that portion of any tax imposed hereunder in excess of two percent shall not apply to travel campgrounds ~~in any county having a population of no less than 60,000 and no greater than 62,500, regardless of the number of days occupied by the same individual or same group of individuals. Stafford County.~~

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy such a transient occupancy tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.

D. Any county, city or town which requires local hotel and motel businesses, or any class thereof, to collect, account for and remit to such locality a local tax imposed on the consumer, may allow such businesses a commission for such service in the form of a deduction from the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof, no less than three percent, not to exceed five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount due was delinquent.

E. All transient occupancy tax collections shall be deemed to be held in trust for the county, city or town imposing the tax.

§ 58.1-3822. Additional transient occupancy tax.

In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 and 58.1-3820, beginning January 1, 1991, and ending January 1, 2006, ~~any county with the county manager plan of government~~ *Arlington County* may impose an additional transient occupancy tax not to exceed one-fourth of one percent of the amount of the charge for the occupancy of any room or space occupied. The revenues collected from the additional tax shall be designated and spent for the purpose of promoting tourism and business travel in the county. Such designated funds shall be in addition to the county's previous budgeted amount for the promotion of tourism and business travel.

§ 58.1-3823. Additional transient occupancy tax for certain counties.

A. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, ~~any county having a population of at least 63,300 but not more than 65,000 or at least 200,000 but not more than 210,000 or any county having the county manager form of government~~ *Hanover County, Chesterfield County and Henrico County* may impose:

1. An additional transient occupancy tax not to exceed four percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for ~~thirty~~ 30 or more days. The revenues collected from the additional tax shall be designated and spent for promoting tourism, travel or business that generates tourism or travel in the Richmond metropolitan area; and

2. An additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for ~~thirty~~ 30 or more days. The revenues collected from the additional tax shall be designated and spent for expanding the Richmond Centre, a convention and exhibition facility in the City of Richmond.

B. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, any county with the county manager plan of government may impose an additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied, provided the county's governing body approves the construction of a county conference center. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for ~~thirty~~ 30 or more days. The revenues collected from the additional tax shall be designated and spent for the design, construction, debt payment, and operation of such conference center.

C. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, ~~any county with a population of at least 70,000 but no more than 100,000; any county with a population of at least 17,910 but no more than 18,000; any county with a population of at least 34,000 but no more than 34,400; and any county having a county manager plan of government~~ *Roanoke County, Rockbridge County, Frederick County*

and Arlington County are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

§ 58.1-3842. Combined transient occupancy and food and beverage tax.

A. Any county having a population of no less than 6,600 and no greater than 7,000 *Rappahannock County*, by duly adopted ordinance, is hereby authorized to levy a tax on occupancy in a bed and breakfast establishment on which the county is authorized to levy a transient occupancy tax under § 58.1-3819 and on food and beverages sold for human consumption within such establishment on which the county is authorized to levy a food and beverage tax under § 58.1-3833, when the charges for the occupancy of the room or space and for the sale of food and beverages are assessed in the aggregate and not separately stated. Such tax shall not exceed four percent of the total amount charged for the occupancy of the room or space occupied and for the food and beverages. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body. All taxes collected under the authority of this article shall be deemed to be held in trust for the county imposing the tax.

B. If a bed and breakfast establishment separately states charges for the occupancy of the room or space and for the sale of food and beverages, a transient occupancy tax levied under § 58.1-3819 and a food and beverage tax levied under § 58.1-3833 shall apply to such separately stated charges, as applicable.

C. Any tax imposed pursuant to this article shall not apply within the limits of any town located in such county, where such town now, or hereafter, imposes a town meals tax or a town transient occupancy tax on the same subject. If the governing body of any town within a county, however, provides that a county tax authorized by this article shall apply within the limits of such town, then such tax may be imposed within such towns.

D. This tax shall be levied only if a food and beverage tax has been approved in a referendum within the county as provided by the second paragraph of subsection A of § 58.1-3833. No county in which the levy of a food and beverage tax has been approved in a referendum pursuant to subsection A of § 58.1-3833 shall be required to submit an amendment to its meals tax ordinance or a further question to the voters in a referendum prior to adopting an ordinance adopting or amending the tax authorized by this article.

E. Nothing herein contained shall affect any authority heretofore granted to any county to levy a food and beverage tax or a transient occupancy tax.