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HOUSE BILL NO. 461**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance
on February 13, 2004)

(Patron Prior to Substitute—Delegate Drake)

*A BILL to amend and reenact §§ 58.1-3703 and 58.1-3706 of the Code of Virginia, relating to the business, professional and occupation license tax.***Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-3703 and 58.1-3706 of the Code of Virginia are amended and reenacted as follows:**

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

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed \$100 for any locality with a population greater than 50,000, ~~fifty dollars~~\$50 for any locality with a population of 25,000 but no more than 50,000 and ~~thirty dollars~~\$30 for any locality with a population smaller than 25,000. Such governing body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C of this section and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed ~~fifty dollars~~\$50 by January 1, 2000; *however, for taxable years beginning on or after January 1, 2005, the fee shall not exceed \$25 for any license issued to a business during the last six months of the locality's tax year.* The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private businesses and industries entering into agreements for the establishment, installation, renovation, remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

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

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

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

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

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

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

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

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

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

81 14. On any blind person operating a vending stand or other business enterprise under the jurisdiction
82 of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in
83 § 51.5-98;

84 15. [Expired.]

85 16. [Repealed.]

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

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

95 (b) On or measured by gifts, contributions, and membership dues of a nonprofit organization.
96 Activities conducted for consideration which are similar to activities conducted for consideration by
97 for-profit businesses shall be presumed to be activities that are part of a business subject to licensure.
98 For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal
99 income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations;

100 19. On any venture capital fund or other investment fund, except commissions and fees of such
101 funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality
102 in which the real estate is located provided the locality is otherwise authorized to tax such businesses
103 and rental of real estate; or

104 20. On total assessments paid by condominium unit owners for common expenses. "Common
105 expenses" and "unit owner" have the same meanings as in § 55-79.41.

106 § 58.1-3706. Limitation on rate of license taxes.

107 A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703,
108 no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712, 58.1-3712.1
109 and 58.1-3713, or any other provision of this title or any charter, shall be imposed on any person whose
110 gross receipts from a business, profession or occupation subject to licensure are less than: (i) \$100,000
111 in any locality with a population greater than 50,000; or (ii) \$50,000 in any locality with a population of
112 25,000 but no more than 50,000. Any business with gross receipts of more than \$100,000, or \$50,000,
113 as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the class of
114 enterprise listed:

115 1. For contracting, and persons constructing for their own account for sale, ~~sixteen~~ 11 cents per \$100
116 of gross receipts;

117 2. For retail sales, ~~twenty~~ 15 cents per \$100 of gross receipts;

118 3. For financial, real estate and professional services, ~~fifty-eight~~ 53 cents per \$100 of gross receipts;
119 and

120 4. For repair, personal and business services, and all other businesses and occupations not specifically
121 listed or excepted in this section, ~~thirty-six~~ 31 cents per \$100 of gross receipts;.

The rate limitations prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi) itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed by § 58.1-3729; (viii) savings institutions and credit unions, which shall be governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct sellers, which shall be governed by § 58.1-3719.1.

B. Any county, city or town which had, on January 1, 19782004, a license tax rate, for any of the categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a higher rate in such category, but no higher than the rate applicable on January 1, 19782004, subject to the following conditions:

1. A locality may not increase a rate on any category which is at or above the maximum prescribed for such category in subsection A.

2. If a locality increases the rate on a category which is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories which are above such maximum.

3. A locality shall lower rates on categories which are above the maximums prescribed in subsection A for any tax year after 19822006 if it receives more revenue in tax year 19812005, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 19812005 shall be the amount of revenue received from all categories in tax year 19802004, plus one-third of the amount, if any, by which such revenue received in tax year 19812005 exceeds the revenue received for tax year 19802004. The revenue base for each tax year after 19812005 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.

C. Any person engaged in the short-term rental business as defined in § 58.1-3510 shall be classified in the category of retail sales for license tax rate purposes.

D. 1. Any person, firm, or corporation designated as the principal or prime contractor receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences shall be subject to a license tax rate not to exceed three cents per \$100 of such federal funds received in payment of such contracts upon documentation provided by such person, firm or corporation to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by that locality in accordance with subdivision 1 of this subsection, and on which a license tax is due and paid, or which gross receipts defined by subdivision 1 of this subsection are properly reported to but exempted by a Virginia locality from taxation, shall not be subject to local license taxation by any other locality in the Commonwealth.

3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county manager plan of government, the following shall govern the taxation of the licensees described in subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences may be separately classified by any such county and subject to tax at a license tax rate not to exceed the limits set forth in subsections A through C above as to such federal funds received in payment of such contracts upon documentation provided by such persons, firms, or corporations to the local commissioner of revenue or finance officer confirming the applicability of this subsection.