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SENATE BILL NO. 585

Offered January 19, 2004

A BILL to amend and reenact §§ 58.1-3, 58.1-609.10, as it shall become effective, and 58.1-609.11 of the Code of Virginia, relating to sales and use tax exemptions for certain nonprofit entities.

Patrons—Colgan, Hawkins, Newman, Puckett and Reynolds

Unanimous consent to introduce

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3, 58.1-609.10, as it shall become effective, and 58.1-609.11 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3. Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;
2. Acts performed or words spoken or published in the line of duty under the law;
3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;
4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent.

6. (Effective July 1, 2004) Information regarding nonprofit entities exempt from sales and use tax under § ~~58.1-611~~ 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable,

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59 and to the clerk of a circuit or district court for their confidential use in facilitating the collection of
60 fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the
61 Virginia Employment Commission, after entering into a written agreement, such tax information as may
62 be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the
63 Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may
64 be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic
65 beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information
66 as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to
67 the Department of the Treasury for its confidential use such tax information as may be necessary to
68 facilitate the location of owners of unclaimed property; (ix) provide to the State Corporation
69 Commission, upon entering into a written agreement, such tax information as may be necessary to
70 facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive
71 Director of the Potomac and Rappahannock Transportation Commission for its confidential use such tax
72 information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi)
73 provide to the Director of the Department of Charitable Gaming such tax information as may be
74 necessary to identify those applicants for registration as a supplier of charitable gaming supplies who
75 have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing
76 and Community Development for its confidential use such tax information as may be necessary to
77 facilitate the administration of the Enterprise Zone Act (§ 59.1-270 et seq.); (xiii) provide current name
78 and address information to private collectors entering into a written agreement with the Tax
79 Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its
80 political subdivisions; however, the Tax Commissioner is not authorized to provide such information to
81 a private collector who has used or disseminated in an unauthorized or prohibited manner any such
82 information previously provided to such collector; and (xiv) provide current name and address
83 information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of
84 cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring
85 an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal
86 Sale or Distribution of Cigarettes Act. The Tax Commissioner is further authorized to enter into written
87 agreements with duly constituted tax officials of other states and of the United States for the inspection
88 of tax returns, the making of audits, and the exchange of information relating to any tax administered by
89 the Department of Taxation. Any person to whom tax information is divulged pursuant to this section
90 shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

91 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the
92 commissioner of revenue or other assessing official is authorized to (i) provide, upon written request
93 stating the reason for such request, the chief executive officer of any county or city with information
94 furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of
95 any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the
96 local sales and use tax revenues payable to the county or city; (ii) provide to the Department of
97 Professional and Occupational Regulation for its confidential use the name, address, and amount of gross
98 receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a
99 profession or occupation administered by the Department of Professional and Occupational Regulation,
100 only after the Department of Professional and Occupational Regulation exhausts all other means of
101 obtaining such information; and (iii) provide to any representative of a condominium unit owners'
102 association, property owners' association or real estate cooperative association, or to the owner of
103 property governed by any such association, the names and addresses of parties having a security interest
104 in real property governed by any such association; however, such information shall be released only
105 upon written request stating the reason for such request, which reason shall be limited to proposing or
106 opposing changes to the governing documents of the association, and any information received by any
107 person under this subsection shall be used only for the reason stated in the written request. The treasurer
108 or other local assessing official may require any person requesting information pursuant to clause (iii) of
109 this subsection to pay the reasonable cost of providing such information. Any person to whom tax
110 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties
111 prescribed herein as though he were a tax official.

112 Notwithstanding the provisions of subsection A or B or any other provisions of this title, the
113 treasurer or other collector of taxes for a county, city or town is authorized to provide information
114 relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course
115 of performing his duties to the commissioner of the revenue or other assessing official for such
116 jurisdiction for use by such commissioner or other official in performing assessments.

117 This section shall not be construed to prohibit a local tax official from imprinting or displaying on a
118 motor vehicle local license decal the year, make, and model and any other legal identification
119 information about the particular motor vehicle for which that local license decal is assigned.

120 E. Notwithstanding any other provisions of law, state agencies and any other administrative or

regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D of this section or by § 59.1-282.4. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

§ 58.1-609.10. (Effective July 1, 2004) Miscellaneous exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.

7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised, edited, reformatted or copied documents, including but not limited to documents stored on or transmitted by electronic media, to its client or to third parties in the course of the professional's rendition of services to its clientele.

8. School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a nonprofit college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his professional practice, regardless of whether such practice is organized as a sole proprietorship, partnership, or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician assistants engaged in the practice of medicine, optometry, or nursing, but excluding nursing homes, clinics, and similar corporations not otherwise exempt under this section; medicines and drugs purchased for use or consumption by a licensed hospital; and samples of prescription drugs and medicines and

182 their packaging distributed free of charge to authorized recipients in accordance with the federal Food,
183 Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). Any veterinarian dispensing or selling
184 medicines or drugs on prescription shall be deemed to be the user or consumer of all such medicines
185 and drugs.

186 10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances,
187 catheters, urinary accessories, other durable medical equipment and devices, and related parts and
188 supplies specifically designed for those products; and insulin and insulin syringes, and equipment,
189 devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when
190 such items or parts are purchased by or on behalf of an individual for use by such individual. Durable
191 medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily
192 used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or
193 injury, and (iv) is appropriate for use in the home.

194 11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

195 12. Special equipment installed on a motor vehicle when purchased by a handicapped person to
196 enable such person to operate the motor vehicle.

197 13. Special typewriters and computers and related parts and supplies specifically designed for those
198 products used by handicapped persons to communicate when such equipment is prescribed by a licensed
199 physician.

200 14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation,
201 treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and
202 proprietary medicines distributed free of charge by the manufacturer, including packaging materials and
203 constituent elements and ingredients.

204 b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to
205 regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision
206 shall not apply to cosmetics.

207 15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt
208 from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political
209 subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

210 16. *Tangible personal property, except property used in any form for recording and reproducing*
211 *services, purchased by nonprofit churches that are exempt from taxation under § 501 (c) (3) of the*
212 *Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions*
213 *of § 58.1-3606, for use (i) in religious worship services by a congregation or church membership while*
214 *meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or*
215 *other rooms in the public church buildings used in carrying out the work of the church and its related*
216 *ministries, including kindergarten, elementary and secondary schools. The exemption for such churches*
217 *shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid*
218 *advertising and are used in carrying out the work of the church; gifts including food for distribution*
219 *outside the public church building; and food, disposable serving items, cleaning supplies and teaching*
220 *materials used in the operation of camps or conference centers by the church or an organization*
221 *composed of churches that are exempt under this subdivision and which are used in carrying out the*
222 *work of the church or churches.*

223 17. *Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings,*
224 *incontinence products and wound-care products, when purchased by a Medicaid recipient through a*
225 *Department of Medical Assistance Services provider agreement.*

226 § 58.1-609.11. (Effective July 1, 2004) Exemptions for nonprofit entities.

227 A. Any nonprofit organization that holds a valid certificate of exemption from the Department of
228 Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts
229 it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to
230 §§ 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or § 58.1-609.10, as such sections are in effect on
231 June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms
232 and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July
233 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that
234 were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were
235 exempt under § 58.1-609.8, *except churches, which will remain exempt under the same criteria and*
236 *procedures in effect for churches on June 30, 2003;* (iv) July 1, 2005, for the second one-half of such
237 entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt
238 under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to
239 maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow
240 the procedures set forth in subsection B and meet the criteria set forth in subsection C. *Provided,*
241 *however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt*
242 *from such collection, provided that it follows the other procedures set forth in subsection B and meets*
243 *the criteria set forth in subsection C.*

B. On and after July 1, 2004, in addition to the ~~exemptions~~ *organizations* described in subsection A, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

C. To qualify for the exemption under subsection B, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501 (c) (3) of the Internal Revenue Code or (ii) under § 501 (c) (4) of the Internal Revenue Code and, if it is exempt under § 501 (c) (4) of the Internal Revenue Code, it is organized for a charitable purpose; or

b. The entity has annual gross receipts less than \$5,000, and the entity is organized for at least one of the purposes set forth in § 501 (c) (3) of the Internal Revenue Code, or one of the charitable purposes set forth in § 501 (c) (4) of the Internal Revenue Code; and

2. The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and

3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

4. If the entity's gross annual revenue was \$250,000 or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant; and

5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and

6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:

a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and

b. The location where the financial records of the entity are available for public inspection.

D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of Taxation shall ask each entity for: ~~an estimate of total taxable purchases for the next year (and where possible, for the total taxable purchases made in the preceding year); provided, however, that no the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (including except the failure to provide requested available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.~~

E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003.

~~E~~F. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

~~F~~G. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

~~G~~H. The Department of Taxation shall file an annual report no later than December 1, 2004, and December 1 of each succeeding year with the Chairman of the House Finance Committee, the Chairman of the House Appropriations Committee, and the Chairman of the Senate Finance Committee, setting forth the annual fiscal impact of the sales and use tax exemptions for nonprofit entities.