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HOUSE BILL NO. 2359

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact §§ 58.1-540, 58.1-548 and 58.1-3506, as it shall become effective, of the Code of Virginia and to repeal § 58.1-549 of the Code of Virginia, relating to local income tax and personal property tax.

Patrons—Watts, Ebbin and Plum; Senator: Ticer

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-540, 58.1-548 and 58.1-3506, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 58.1-540. Levy of the tax.

A. Any Every county having a population of more than 500,000, as determined by the 1980 U.S. Census, any county or city adjacent thereto, and any and city contiguous to such an adjacent county or city, or any city with a population of at least 265,000, is hereby authorized to may levy a local income tax at any increment of one-quarter percent up to a maximum rate of one either one-half or one percent upon the Virginia taxable income as determined in § 58.1-322 for an individual, § 58.1-361 for a fiduciary of an estate or trust, or § 58.1-402 for a corporation, for each taxable year of every resident of such county or city or corporation having income from sources within such county or city, subject to the limitations of subsection B of this section, provided the personal property tax rate imposed by the county or city on motor vehicles as defined in subsection A 33 of § 58.1-3506 does not exceed \$0.01 per \$100. The same income tax rate allowed under this section shall apply to individuals, fiduciaries, and corporations.

B. The authority to levy a local income tax as provided in subsection A may be exercised by a county or city governing body only if approved in a referendum within the county or city. The referendum shall be held in accordance with § 24.2-684. The referendum may be initiated either by a resolution of the governing body of the county or city or on the filing of a petition signed by a number of registered voters of the county or city equal in number to ten percent of the number of voters registered in the county or city on January 1 of the year in which the petition is filed with the circuit court of such county or city. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county or city once a week for three consecutive weeks prior to the election. The ballot used shall be printed to read as follows:

"Shall the governing body of (...name of county or city...) have the authority to levy a local income tax of up to one percent for transportation purposes in accordance with § 58.1-540 of the Code of Virginia?"

☐ Yes

☐ No"

If the voters by a majority vote approve the authority of the local governing body to levy a local income tax, the The tax may be imposed by with the adoption of an ordinance by the governing body of the county or city in accordance with general or special law, and the tax may be thereafter enacted, modified or repealed as any other tax the governing body is empowered to levy subject only to the limitations herein. No ordinance levying a local income tax shall be repealed unless and until all debts or other obligations of the county or city to which such revenues are pledged or otherwise committed have been paid or provision made for payment.

§ 58.1-548. Disposition of revenues; costs of administration.

A. All local income tax revenues collected by the Tax Commissioner pursuant to this article shall be paid into the General Fund of the state treasury.

B. Such revenues shall be transferred monthly by the Comptroller to a special fund entitled "Collections of Local Income Taxes," upon certification of such amounts by the Tax Commissioner.

C. As soon as practicable after the last day of each calendar quarter, the Comptroller shall pay over and distribute to each county and city the local income tax revenues to be estimated by the Tax Commissioner. The Tax Commissioner shall reconcile such estimates during the month following the close of the fiscal year for those returns on file for the preceding taxable year.

D. The direct costs of state administration of the local income tax as certified to the Comptroller by the Department of Taxation shall be deducted on a prorated basis from the distributions to each county and city under subsection C of this section. In determining each county's or city's prorated share of

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59 administrative costs, the Comptroller shall apportion the total administrative costs in the ratio which the
60 revenues of each county or city bear to the total local income tax revenues distributed. The direct costs
61 for local administration of the local income tax shall be paid entirely from the local revenues of the
62 county or city.

63 E. All revenues distributed to a county or city under subsection C of this section shall be applied and
64 expended for transportation purposes, including, without limitation, construction, administration,
65 operation, improvement, maintenance and financing of transportation facilities.

66 As used in this section, the term "transportation facilities" shall include all transportation related
67 facilities including, but not limited to, all highway systems, public transportation or mass transit systems
68 as defined in § 33.1-12, airports as defined in § 5.1-1, and port facilities as defined in § 62.1-140. Such
69 term shall be liberally construed for purposes of this section.

70 Any county or city that levies a local income tax under this article shall not reduce the total amount
71 of its annual general fund appropriations, exclusive of the revenues derived from the tax levied under
72 this article, for transportation purposes below the total amount appropriated for those purposes in the
73 fiscal year preceding the adoption of the ordinance levying the tax.

74 Revenues derived by a county or city from the local income tax levied under this article shall be in
75 addition to those allocated to the county or city from state transportation funds, which allocations shall
76 not be reduced as a result of any revenues received hereunder.

77 F. If any revenues distributed to a county or city under subsection C of this section are applied or
78 expended for any transportation facilities under the control and jurisdiction of any state agency, board,
79 commission or authority, such transportation facilities shall be constructed, operated, administered,
80 improved and maintained in accordance with laws, rules, regulations, policies and procedures governing
81 said state agency, board, commission or authority; provided, however, that in the event these revenues,
82 or a portion thereof, are expended for improving or constructing highways in a county which is subject
83 to the provisions of § 33.1-75.3, such expenditures shall be undertaken in the manner prescribed in that
84 statute.

85 § 58.1-3506. Other classifications of tangible personal property for taxation.

86 A. The items of property set forth below are each declared to be a separate class of property and
87 shall constitute a classification for local taxation separate from other classifications of tangible personal
88 property provided in this chapter:

89 1. Boats or watercraft weighing five tons or more;

90 2. Aircraft having a maximum passenger seating capacity of no more than 50 which are owned and
91 operated by scheduled air carriers operating under certificates of public convenience and necessity issued
92 by the State Corporation Commission or the Civil Aeronautics Board;

93 3. All other aircraft not included in subdivision A 2 and flight simulators;

94 4. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation
95 purposes as provided in subsection C of § 46.2-730;

96 5. Tangible personal property used in a research and development business;

97 6. Heavy construction machinery, including but not limited to land movers, bulldozers, front-end
98 loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity
99 equipment and ditch and other types of diggers;

100 7. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy
101 source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any
102 other alternative energy source for use in manufacturing and any cogeneration equipment purchased to
103 achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment
104 shall include, without limitation, such equipment purchased by firms engaged in the business of
105 generating electricity or steam, or both;

106 8. Vehicles without motive power, used or designed to be used as manufactured homes as defined in
107 § 36-85.3;

108 9. Computer hardware used by businesses primarily engaged in providing data processing services to
109 other nonrelated or nonaffiliated businesses;

110 10. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes
111 only;

112 11. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons,
113 including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

114 12. Motor vehicles specially equipped to provide transportation for physically handicapped
115 individuals;

116 13. Motor vehicles (i) owned by members of a volunteer rescue squad or volunteer fire department
117 or (ii) leased by members of a volunteer rescue squad or volunteer fire department if the member is
118 obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One
119 motor vehicle which is owned by each volunteer rescue squad member or volunteer fire department
120 member, or leased by each volunteer rescue squad member or volunteer fire department member if the

member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer rescue squad member or volunteer fire department member regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer fire department member is identified. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline. In any county which prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the vehicle certified as of the immediately prior January date is transferred during the tax year;

14. Motor vehicles (i) owned by auxiliary members of a volunteer rescue squad or volunteer fire department or (ii) leased by auxiliary members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is regularly used by each auxiliary volunteer fire department or rescue squad member may be specially classified under this section. The auxiliary member shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or fire department who regularly performs duties for the rescue squad or fire department, and the motor vehicle is identified as regularly used for such purpose; however, if a volunteer rescue squad or fire department member and an auxiliary member are members of the same household, that household shall be allowed no more than two special classifications under this subdivision or subdivision 13 of this section. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

15. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound persons or provide transportation to senior or handicapped citizens in the community to carry out the purposes of the nonprofit organization;

16. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as defined in § 46.2-1900, which are used for recreational purposes only, and privately owned trailers as defined in § 46.2-100 that are designed and used for the transportation of horses except those trailers described in subdivision A 11 of § 58.1-3505;

17. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written statement to the commissioner of revenue or other assessing officer from the Department of Veterans Services that the veteran has been so designated or classified by the Department of Veterans Services as to meet the requirements of this section, and that his disability is service-connected. For purposes of this section, a person is blind if he meets the provisions of § 46.2-739;

18. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially classified under this section. In order to qualify for such classification, any auxiliary police officer who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body which has appointed such auxiliary police officer or from the official who has appointed such auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for which the classification is sought is the vehicle which is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

19. Until the first to occur of June 30, 2009, or the date that a special improvements tax is no longer levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created

182 pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in
183 manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District,
184 provided that such business personal property is put into service within the District on or after July 1,
185 1999;

186 20. Motor vehicles which use clean special fuels as defined in § 46.2-749.3;

187 21. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility which is
188 properly licensed by the federal government, the Commonwealth, or both, and which is properly zoned
189 for such use. "Wild animals" means any animals which are found in the wild, or in a wild state, within
190 the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals
191 which are found in the wild, or in a wild state, and are native to a foreign country;

192 22. Furniture, office, and maintenance equipment, exclusive of motor vehicles, which are owned and
193 used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and which is
194 used by that organization for the purpose of maintaining or using the open or common space within a
195 residential development;

196 23. Motor vehicles, trailers and semitrailers with a gross vehicle weight of 10,000 pounds or more
197 used to transport property for hire by a motor carrier engaged in interstate commerce;

198 24. All tangible personal property employed in a trade or business other than that described in
199 subdivisions A 1 through A 18, except for subdivision A 17, of § 58.1-3503;

200 25. Programmable computer equipment and peripherals employed in a trade or business;

201 26. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational
202 purposes only;

203 27. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for
204 recreational purposes only;

205 28. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes
206 only;

207 29. Tangible personal property used in the provision of Internet services. For purposes of this
208 subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables
209 users to access content, information, electronic mail, and the Internet as part of a package of services
210 sold to customers;

211 30. Motor vehicles (i) owned by persons who serve as auxiliary, reserve or special deputy sheriffs or
212 (ii) leased by persons who serve as auxiliary, reserve or special deputy sheriffs if the person is obligated
213 by the terms of the lease to pay tangible personal property tax on the motor vehicle. For purposes of
214 this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve or special deputy sheriff.
215 One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to auxiliary deputy
216 sheriff duties may be specially classified under this section. In order to qualify for such classification,
217 any auxiliary deputy sheriff who applies for such classification shall identify the vehicle for which this
218 classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a
219 certification from the governing body that has appointed such auxiliary deputy sheriff or from the
220 official who has appointed such auxiliary deputy sheriff. That certification shall state that the applicant
221 is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary duties, and
222 it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used
223 for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of
224 revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall
225 be authorized, in his discretion, and for good cause shown and without fault on the part of the member,
226 to accept a certification after the January 31 deadline;

227 31. Forest harvesting and silvicultural activity equipment; and

228 32. Equipment used primarily for research, development, production, or provision of biotechnology
229 for the purpose of developing or providing products or processes for specific commercial or public
230 purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related
231 purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as
232 defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes
233 of this section, biotechnology equipment means equipment directly used in activities associated with the
234 science of living things; and

235 33. *Motor vehicles owned by natural persons and for which a preponderance of their use is for other*
236 *than business purposes. The preponderance of use for other than business purposes shall be deemed not*
237 *to be satisfied if: (i) the motor vehicle is expensed on the taxpayer's federal income tax return pursuant*
238 *to Internal Revenue Code § 179; (ii) more than 50 percent of the basis for depreciation of the motor*
239 *vehicle is depreciated for federal income tax purposes; or (iii) the allowable expense of total annual*
240 *mileage in excess of 50 percent is deductible for federal income tax purposes or reimbursed pursuant to*
241 *an arrangement between an employer and employee.*

242 B. The governing body of any county, city or town may levy a tax on the property enumerated in
243 subsection A at different rates from the tax levied on other tangible personal property. The rates of tax

and the rates of assessment shall (i) for purposes of subdivisions 1, 2, 3, 4, 6, 9 through 18, 20 through 22, and 24 through 32 33 of subsection A, not exceed that applicable to the general class of tangible personal property, (ii) for purposes of subdivisions A 5, A 7, A 19, and A 23, not exceed that applicable to machinery and tools, and (iii) for purposes of subdivision A 8, equal that applicable to real property.

C. (Effective January 1, 2006) Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed for tangible personal property taxes by a county, city, or town receiving a payment from the Commonwealth under Chapter 35.1 of this title for providing tangible personal property tax relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle at a rate not to exceed the rates of tax and rates of assessment required under such chapter.

2. That § 58.1-549 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on January 1, 2006.