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HOUSE BILL NO. 311

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 13, 2004)

(Patron Prior to Substitute—Delegate Purkey)

A *BILL to amend and reenact § 58.1-609.11 of the Code of Virginia, relating to exemptions for nonprofit entities.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-609.11 of the Code of Virginia is amended and reenacted as follows:

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

A. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to §§ 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 June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow the procedures set forth in subsection B and meet the criteria set forth in subsection C.

B. On and after July 1, 2004, in addition to the exemptions 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, *travel expenses, office expenses, and fundraising, relative to its annual gross revenue, but excluding programmatic costs*, under generally accepted accounting principles, *is are* not greater than 40 percent *of its gross expenditures*; 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 information provided pursuant to this subsection (including the failure to provide requested information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

E. 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

60 entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute
61 grounds for revocation of the exemption by the Department. At the end of the period of such exemption,
62 to maintain or renew the exemption, each entity must provide the Department of Taxation the same
63 information as required upon initial exemption and meet the same criteria.

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

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