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HOUSE BILL NO. 361

House Amendments in [] - February 4, 2008

A *BILL to amend and reenact §§ 58.1-605 and 58.1-606 of the Code of Virginia, relating to sales and use tax on motor vehicle repairs in certain localities; exemption of motor vehicle towing charges.*

Patron Prior to Engrossment—Delegate Purkey

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-605 and 58.1-606 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last preceding school age population census, such increase shall, for the purposes of this section, be added to the school age population of such town as

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59 shown by the last such census and a proper reduction made in the school age population of the county
60 or counties from which the annexed territory was acquired.

61 H. One-half of such payments to counties are subject to the further qualification, other than as set
62 out in subsection G above, that in any county wherein is situated any incorporated town not constituting
63 a separate special school district which has complied with its charter provisions providing for the
64 election of its council and mayor for a period of at least four years immediately prior to the adoption of
65 the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for
66 general governmental purposes the proper proportionate amount received by him in the ratio that the
67 school age population of each such town bears to the school age population of the entire county, based
68 on the latest statewide school census. The preceding requirement pertaining to the time interval between
69 compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city.
70 If the school age population of any such town not constituting a separate special school district is
71 increased by the annexation of territory or otherwise since the last preceding school age population
72 census, such increase shall, for the purposes of this section, be added to the school age population of
73 such town as shown by the last such census and a proper reduction made in the school age population
74 of the county or counties from which the annexed territory was acquired.

75 I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its
76 discretion, appropriate funds to any incorporated town not constituting a separate school district within
77 such county which has not complied with the provisions of its charter relating to the elections of its
78 council and mayor, an amount not to exceed the amount it would have received from the tax imposed
79 by this chapter if such election had been held.

80 J. It is further provided that if any incorporated town which would otherwise be eligible to receive
81 funds from the county treasurer under subsection G or H of this section be located in a county which
82 does not levy a general retail sales tax under the provisions of this law, such town may levy a general
83 retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to
84 all the provisions of this section generally applicable to cities and counties. Any tax levied under the
85 authority of this subsection shall in no case continue to be levied on or after the effective date of a
86 county ordinance imposing a general retail sales tax in the county within which such town is located.

87 K. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation
88 Authority and the Northern Virginia Transportation Authority may impose a retail sales tax at the rate of
89 5% on (i) charges for separately stated labor or services in the repair of motor vehicles and (ii) charges
90 for the repair of a motor vehicle in cases in which the true object of the repair is a service provided
91 within a city or county embraced by the respective Authority. *The tax authorized under this subsection*
92 *shall not apply to the towing [~~or storage of motor vehicles~~ of motor vehicles or to the provision of*
93 *emergency road services on any highway of the Commonwealth, as defined in § 46.2-100.]*

94 2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the
95 applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration
96 by the Department, shall be deposited and held in a special trust fund under the control of the State
97 Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a
98 monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads
99 Transportation Authority or the Northern Virginia Transportation Authority as appropriate.

100 3. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except
101 as otherwise provided herein, the tax under this subsection shall be administered and collected in the
102 same manner and subject to the same penalties as provided for the local retail sales tax.

103 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;
104 collection thereof by Commonwealth and return of revenues to the cities and counties.

105 A. The council of any city and the governing body of any county which has levied or may hereafter
106 levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one
107 percent to provide revenue for the general fund of such city or county. Such tax shall be added to the
108 rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter,
109 and all amendments thereof, and the rules and regulations published with respect thereto, except that no
110 discount under § 58.1-622 shall be allowed on a local use tax.

111 B. The council of any city and the governing body of any county desiring to impose a local use tax
112 under this section may do so in the manner following:

113 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local
114 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority
115 of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this
116 section, and providing that the local use tax shall become effective on the first day of a month at least
117 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to
118 the Tax Commissioner so that it will be received within five days after its adoption. The resolution
119 authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision
120 of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § 58.1-605.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

F. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § 58.1-605 with respect to local sales tax revenue.

H. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation Authority and the Northern Virginia Transportation Authority may impose a retail use tax at the rate of 5% on (i) charges for separately stated labor or services for the repair of motor vehicles and (ii) charges for the repair of a motor vehicle in cases in which the true object of the repair is a service provided within a city or county embraced by the respective Authority. *The tax authorized under this subsection shall not apply to the towing [~~or storage of motor vehicles~~ of motor vehicles or to the provision of emergency road services on any highway of the Commonwealth, as defined in § 46.2-100.]*

2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration by the Department, shall be deposited and held in a special trust fund under the control of the State Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads Transportation Authority or the Northern Virginia Transportation Authority as appropriate.

3. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except as otherwise provided herein, the tax under this subsection shall be administered and collected in the same manner and subject to the same penalties as provided for the local retail use tax.