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HOUSE BILL NO. 472

Offered January 9, 2008

Prefiled January 7, 2008

A BILL to amend and reenact §§ 58.1-540, 58.1-548, and 58.1-3506 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.

Patron—Watts

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

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

§ 58.1-540. Levy of the tax.

A. The Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, Norfolk, and Virginia Beach hereby authorized to *Every county and city may* levy a local income tax at a ~~maximum~~ rate of ~~one percent~~ *either 0.50 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 subdivision A 38 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 administrative costs, the Comptroller shall apportion the total administrative costs in the ratio which the revenues of each county or city bear to the total local income tax revenues distributed. The direct costs

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59 for local administration of the local income tax shall be paid entirely from the local revenues of the
60 county or city.

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

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

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

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

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

83 § 58.1-3506. Other classifications of tangible personal property for taxation.

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

87 1. a. Boats or watercraft weighing five tons or more, not used solely for business purposes;

88 b. Boats or watercraft weighing less than five tons, not used solely for business purposes;

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

92 3. Aircraft having a registered empty gross weight equal to or greater than 20,000 pounds that are
93 not owned or operated by scheduled air carriers recognized under federal law, but not including any
94 aircraft described in subdivision 4;

95 4. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding
96 those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and
97 otherwise used for educational purposes (including such flights as are necessary for testing, maintaining,
98 or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such
99 flights necessary for testing, maintaining, or preparing such aircraft for safe operation), shall constitute a
100 new class of property. Such class of property shall not include any aircraft used for commercial
101 purposes, including transportation and other services for a fee;

102 5. All other aircraft not included in subdivisions A 2, A 3, or A 4 and flight simulators;

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

105 7. Tangible personal property used in a research and development business;

106 8. Heavy construction machinery not used for business purposes, including but not limited to land
107 movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest
108 harvesting and silvicultural activity equipment and ditch and other types of diggers;

109 9. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy
110 source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any
111 other alternative energy source for use in manufacturing and any cogeneration equipment purchased to
112 achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment
113 shall include, without limitation, such equipment purchased by firms engaged in the business of
114 generating electricity or steam, or both;

115 10. Vehicles without motive power, used or designed to be used as manufactured homes as defined
116 in § 36-85.3;

117 11. Computer hardware used by businesses primarily engaged in providing data processing services
118 to other nonrelated or nonaffiliated businesses;

119 12. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes
120 only;

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

123 14. Motor vehicles specially equipped to provide transportation for physically handicapped
124 individuals;

125 15. Motor vehicles (i) owned by members of a volunteer rescue squad or volunteer fire department
126 or (ii) leased by members of a volunteer rescue squad or volunteer fire department if the member is
127 obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One
128 motor vehicle that is owned by each volunteer rescue squad member or volunteer fire department
129 member, or leased by each volunteer rescue squad member or volunteer fire department member if the
130 member is obligated by the terms of the lease to pay tangible personal property tax on the motor
131 vehicle, may be specially classified under this section, provided the volunteer rescue squad member or
132 volunteer fire department member regularly responds to emergency calls. The volunteer shall furnish the
133 commissioner of revenue, or other assessing officer, with a certification by the chief or head of the
134 volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department
135 who regularly responds to calls or regularly performs other duties for the rescue squad or fire
136 department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer
137 fire department member is identified. The certification shall be submitted by January 31 of each year to
138 the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other
139 assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on
140 the part of the member, to accept a certification after the January 31 deadline. In any county that
141 prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may
142 be certified and classified pursuant to this subsection when the vehicle certified as of the immediately
143 prior January date is transferred during the tax year;

144 16. Motor vehicles (i) owned by auxiliary members of a volunteer rescue squad or volunteer fire
145 department or (ii) leased by auxiliary members of a volunteer rescue squad or volunteer fire department
146 if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor
147 vehicle. One motor vehicle that is regularly used by each auxiliary volunteer fire department or rescue
148 squad member may be specially classified under this section. The auxiliary member shall furnish the
149 commissioner of revenue, or other assessing officer, with a certification by the chief or head of the
150 volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or fire
151 department who regularly performs duties for the rescue squad or fire department, and the motor vehicle
152 is identified as regularly used for such purpose; however, if a volunteer rescue squad or fire department
153 member and an auxiliary member are members of the same household, that household shall be allowed
154 no more than two special classifications under this subdivision or subdivision 15 of this section. The
155 certification shall be submitted by January 31 of each year to the commissioner of revenue or other
156 assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in
157 his discretion, and for good cause shown and without fault on the part of the member, to accept a
158 certification after the January 31 deadline;

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

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

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

173 20. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police
174 officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons
175 who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms
176 of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is
177 regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially
178 classified under this section. In order to qualify for such classification, any auxiliary police officer who
179 applies for such classification shall identify the vehicle for which this classification is sought, and shall
180 furnish the commissioner of revenue or other assessing officer with a certification from the governing
181 body that has appointed such auxiliary police officer or from the official who has appointed such

182 auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who
183 regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for
184 which the classification is sought is the vehicle that is regularly used for that purpose. The certification
185 shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer;
186 however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion,
187 and for good cause shown and without fault on the part of the member, to accept a certification after the
188 January 31 deadline;

189 21. Until the first to occur of June 30, 2009, or the date that a special improvements tax is no longer
190 levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created
191 pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in
192 manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District,
193 provided that such business personal property is put into service within the District on or after July 1,
194 1999;

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

196 23. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility that is properly
197 licensed by the federal government, the Commonwealth, or both, and that is properly zoned for such
198 use. "Wild animals" means any animals that are found in the wild, or in a wild state, within the
199 boundaries of the United States, its territories or possessions. "Exotic animals" means any animals that
200 are found in the wild, or in a wild state, and are native to a foreign country;

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

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

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

209 27. Programmable computer equipment and peripherals employed in a trade or business;

210 28. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational
211 purposes only;

212 29. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for
213 recreational purposes only;

214 30. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes
215 only;

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

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

236 33. Forest harvesting and silvicultural activity equipment;

237 34. Equipment used primarily for research, development, production, or provision of biotechnology
238 for the purpose of developing or providing products or processes for specific commercial or public
239 purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related
240 purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as
241 defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes
242 of this section, biotechnology equipment means equipment directly used in activities associated with the
243 science of living things;

35. Boats or watercraft weighing less than five tons, used for business purposes only;

36. Boats or watercraft weighing five tons or more, used for business purposes only; ~~and~~

37. Tangible personal property which is owned and operated by a service provider who is not a CMRS provider and is not licensed by the FCC used to provide, for a fee, wireless broadband Internet service. For purposes of this subdivision, "wireless broadband Internet service" means a service that enables customers to access, through a wireless connection at an upload or download bit rate of more than one megabyte per second, Internet service, as defined in § 58.1-602, as part of a package of services sold to customers; ~~and~~

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

B. The governing body of any county, city or town may levy a tax on the property enumerated in 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, 5, 6, 8, 11 through 20, 22 through 24, and 26 through ~~37~~ 38 of subsection A, not exceed that applicable to the general class of tangible personal property, (ii) for purposes of subdivisions A 7, A 9, A 21, and A 25, not exceed that applicable to machinery and tools, and (iii) for purposes of subdivision A 10, equal that applicable to real property.

C. 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, 2009.