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SENATE BILL NO. 543

Senate Amendments in [] — February 7, 2008

A *BILL to amend and reenact § 58.1-609.11 of the Code of Virginia, relating to sales and use tax exemptions; non-profit schools.*

Patron Prior to Engrossment—Senator Obenshain

Referred to Committee on Finance

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. 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, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (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. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C.

B. On and after July 1, 2004, in addition to the 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 \$1 million or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant. If the entity's gross annual revenue was between \$750,000 and \$1 million, then the entity must provide either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public accountant. *The provisions of this subdivision shall not apply to any elementary or secondary school that [submits files] a federal 990 or 990 EZ tax form [with the*

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60 *Internal Revenue Service and provides a copy of the same to the Department of Taxation] and that is (i)*
61 *licensed by the Department of Education as a school for students with disabilities pursuant to Chapter*
62 *16 (§ 22.1-319 et seq.) of Title 22.1, or (ii) accredited by an entity approved to determine accreditation*
63 *by the Virginia Department of Education; and*

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

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

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

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

72 D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of
73 Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such
74 records are not available through no fault of the entity. If the records are not available through no fault
75 of the entity, then the entity must provide such information to the Department the following year. No
76 information provided pursuant to this subsection (except the failure to provide available information)
77 shall be a basis for the Department of Taxation to refuse to exempt an entity.

78 E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be
79 exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its
80 election, if (i) the entity is within the same class of organization of any entity that was exempt from
81 collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster,
82 sponsor, and promote physical education, athletic programs, and contests for youths in the
83 Commonwealth.

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

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

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