

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 692

An Act to amend and reenact § 58.1-3510 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 35 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-3510.4 through 58.1-3510.7, and to repeal §§ 58.1-3510.1, 58.1-3510.2, and 58.1-3510.3 of the Code of Virginia, relating to taxation of merchants' capital and short-term rental property.

[S 1419]

Approved March 30, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3510 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 35 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-3510.4 through 58.1-3510.7, as follows:

§ 58.1-3510. Definition of merchants' capital.

A. Merchants' capital is defined as follows: Inventory of stock on hand; daily rental vehicles as defined in § 58.1-2401; ~~daily rental property as defined below~~; and all other taxable personal property of any kind whatsoever, except money on hand and on deposit and except tangible personal property not offered for sale as merchandise, which tangible personal property shall be reported and assessed as such.

B. For purposes of this section, a repair and service operation (i) carried on as an integral part of and in conjunction with a business that is primarily mercantile and (ii) the principal sales of such business are subject to the tax imposed by Chapter 24 (§ 58.1-2400 et seq.) of this title shall be deemed a mercantile business, and all capital, as defined herein, including all repair parts, materials and supplies associated with such repair and service operation shall be deemed merchants' capital.

B. For purposes of this section, "daily rental property" means all tangible personal property held for rental and owned by a person engaged in the short-term rental business, except trailers as defined in § 46.2-100 and other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or the Department of Aviation.

C. A person is engaged in the short-term rental business if not less than eighty percent of the gross rental receipts of such business in any year are from transactions involving rental periods of ninety-two consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessor. "Affiliated" for purposes of this subsection shall mean any common ownership interest in excess of five percent of any officers or partners in common with the lessor and lessee. For purposes of this test, (i) any rental to a person affiliated with the lessor shall be treated as rental receipts but shall not qualify for purposes of the eighty percent requirement, and (ii) any rental of personal property which also involves the provision of personal services for the operation of the personal property rented shall not be treated as gross receipts from rental. For purposes of this section, the delivery and installation of tangible personal property shall not mean operation.

D. Except for daily rental vehicles, rental property that is not daily rental property shall be classified pursuant to § 58.1-3503.

E. C. For purposes of valuing lottery tickets as part of a dealer's inventory, cost shall include only the compensation payable to a licensed sales agent as provided by rules or regulations adopted by the Board consistent with the provisions of subdivision 11 of subsection A of § 58.1-4007. The value of lottery tickets shall not be based on the cost of the tickets to the merchant.

Article 3.1.

Short-Term Rental Property.

§ 58.1-3510.4. Short-term rental property; short-term rental businesses.

A. For purposes of this section, "short-term rental property" means all tangible personal property held for rental and owned by a person engaged in the short-term rental business as defined in subsection B, excluding (i) trailers as defined in § 46.2-100, and (ii) other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or Department of Aviation.

B. A person is engaged in the short-term rental business if:

1. Not less than 80 percent of the gross rental receipts of such business during the preceding year arose from transactions involving the rental of short-term rental property, other than heavy equipment property as defined in subdivision 2, for periods of 92 consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessee; or

2. Not less than 60 percent of the gross rental receipts of such business during the preceding year arose from transactions involving the rental of heavy equipment property for periods of 270 consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the

lessee. For the purposes of this subdivision, "heavy equipment property" means rental property of an industry that is described under code 532412 or 532490 of the 2002 North American Industry Classification System as published by the United States Census Bureau, excluding office furniture, office equipment, and programmable computer equipment and peripherals as defined in § 58.1-3503 A 16.

C. For purposes of determining whether a person is engaged in the short-term rental business as defined in subsection B, (i) a person is "affiliated" with the lessee of rental property if such person is an officer, director, partner, member, shareholder, parent or subsidiary of the lessee, or if such person and the lessee have any common ownership interest in excess of five percent, (ii) any rental to a person affiliated with the lessee shall be treated as rental receipts but shall not qualify for purposes of the 80 percent requirement of subdivision 1 of subsection B or the 60 percent requirement of subdivision 2 of subsection B, and (iii) any rental of personal property which also involves the provision of personal services for the operation of the personal property rented shall not be treated as gross receipts from rental, provided however that the delivery and installation of tangible personal property shall not mean operation for the purposes of this subdivision.

D. A person who has not previously been engaged in the short-term rental business who applies for a certificate of registration pursuant to § 58.1-3510.5 shall be eligible for registration upon his certification that he anticipates meeting the requirements of a specific subdivision of subsection B, designated by the applicant at the time of application, during the year for which registration is sought.

E. In the event that the commissioner of the revenue makes a written determination that a rental business previously certified as short-term rental business pursuant to § 58.1-3510.5 has failed to meet either of the tests set forth in subsection B during a preceding tax year, such business shall lose its certification as a short-term rental business and shall be subject to the business personal property tax with respect to all rental property for the tax year in which such certification is lost and any subsequent tax years until such time as the rental business obtains recertification pursuant to § 58.1-3510.5. In the event that a rental business loses its certification as a short-term rental business pursuant to this subsection, such business shall not be required to refund to customers daily rental property taxes previously collected in good faith and shall not be subject to assessment for business personal property taxes with respect to rental property for tax years preceding the year in which the certification is lost unless the commissioner makes a written determination that the business obtained its certification by knowingly making materially false statements in its application, in which case the commissioner may assess the taxpayer the amount of the difference between short-term rental property taxes remitted by such business during the period in which the taxpayer wrongfully held certification and the business personal property taxes that would have been due during such period but for the certification obtained by the making of the materially false statements. Any such assessment, and any determination not to certify or to decertify a rental business as a short-term rental business as defined in this subsection, may be appealed pursuant to the procedures and requirements set forth in § 58.1-3983.1 for appeals of local business taxes, which shall apply mutatis mutandis to such assessments and certification decisions.

F. A rental business that has been decertified pursuant to the provisions of subsection E shall be eligible for recertification for a subsequent tax year upon a showing that it has met one of the tests provided in subsection B for at least ten months of operations during the present tax year.

§ 58.1-3510.5. Renter's certificate of registration.

Every person engaging in the short-term rental business, as defined in § 58.1-3510.4, in a county, city or town which has enacted an ordinance imposing a short-term rental property tax pursuant to § 58.1-3510.6 shall file annually with the commissioner of the revenue of such county or city or the designated official of such town an application for a certificate of registration. The application shall be in a form prescribed by the commissioner of the revenue or designated town official and shall set forth the name under which the applicant operates or intends to operate the rental business, the location of the business, the subdivision of § 58.1-3510.4 B under which the business asserts that it is qualified for certification as a short-term rental business, and such other information as the commissioner or designated town official may require.

Each applicant shall sign the application as owner of the rental business. If the rental business is owned by an association, partnership, limited liability company, or corporation, the application shall be signed by a member, partner, executive officer, or other person specifically authorized by the association, partnership, limited liability company, or corporation to sign.

Upon approval of the application by the commissioner, a certificate of registration shall be issued. The certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The certificate is not assignable and shall be valid only for the person in whose name it is issued and the place of business designated.

§ 58.1-3510.6. Short-term rental property tax.

A. The governing body of any county, city, or town may levy a tax in an amount not to exceed one percent, in addition to the tax levied pursuant to § 58.1-605, on the gross proceeds arising from rentals of any person engaged in the short-term rental business as defined in § 58.1-3510.4 B 1. "Gross proceeds" means the total amount charged to each person for the rental of short-term rental property,

excluding any state and local sales tax paid under the provisions of Chapter 6 (§ 58.1-600 et seq.) of this title. The imposition and collection of a short-term rental property tax pursuant to this section with respect to rental property shall be in lieu of taxation of such rental property as tangible business personal property in the same tax year.

B. The governing body of any county, city, or town may levy a tax in an amount not to exceed one-and-one-half percent, in addition to the tax levied pursuant to § 58.1-605, on the gross proceeds arising from rentals of any person engaged in the short-term rental business as defined in § 58.1-3510.4 B 2. "Gross proceeds" means the total amount charged to each person for the rental of short-term rental property, excluding any state and local sales tax paid under the provisions of Chapter 6 (§ 58.1-600 et seq.) of this title. The imposition and collection of a short-term rental property tax pursuant to this section with respect to rental property shall be in lieu of taxation of such rental property as tangible business personal property in the same tax year.

C. Any person engaged in the short-term rental business, as defined in § 58.1-3510.4, in a city, county or town that has adopted an ordinance imposing a short-term rental property tax pursuant to this section shall collect such tax from each lessee of rental property at the time of rental and shall transmit a quarterly return, not later than the fifteenth day following the end of each calendar quarter, to the commissioner of the revenue of the county or city or the designated official of the town wherein the tax is collected, reporting the gross rental proceeds derived from the short-term rental business. The commissioner of the revenue shall assess the tax due, and the short-term rental business shall pay the tax so assessed to the treasurer or director of finance not later than the last day of the month following the end of the calendar quarter. Any failure to file a quarterly return required by this section or to pay short-term rental property tax when due shall be subject to the provisions of § 58.1-3510.7.

D. Notwithstanding the provisions of subsections A and B, no tax shall be collected or assessed on (i) rentals by the Commonwealth, any political subdivision of the Commonwealth or the United States or (ii) any rental of durable medical equipment as defined in subdivision 10 of § 58.1-609.10.

E. Except for daily rental vehicles, rental property shall be classified, assessed and taxed as tangible personal property if such property:

1. Is owned and rented by a person not engaged in the short-term rental business, as defined in § 58.1-3510.4; or

2. Has acquired situs in the Commonwealth and is owned and rented by a person who does not collect and remit to a locality within the Commonwealth a short-term rental property tax with respect to the rental of such property.

§ 58.1-3510.7. Exemptions; penalties.

Provisions in §§ 58.1-609.1 through 58.1-609.11 of Chapter 6 relating to exemptions, §§ 58.1-635 and 58.1-636 relating to penalties, and § 58.1-625 relating to the manner of collecting the local retail sales and use tax applicable in Chapter 6 (§ 58.1-600 et seq.) of this title, shall apply mutatis mutandis to the short-term rental property tax, except that the commissioner of revenue shall assess the tax due, and the treasurer or director of finance shall collect the short-term rental property tax, instead of the Department of Taxation. Any other provision in Chapter 6 shall apply if adopted by local ordinance pursuant to § 58.1-3510.6.

2. That §§ 58.1-3510.1, 58.1-3510.2, and 58.1-3510.3 of the Code of Virginia are repealed.

3. That the provisions of this act shall be effective for tax years beginning on and after January 1, 2009.

4. That notwithstanding any other provision of law, any person engaged in the business of renting daily rental property as defined under existing law prior to the effective date of this act who was collecting the daily rental property tax pursuant to § 58.1-3510.1 on December 31, 2008, shall remain eligible to collect such tax from January 1, 2009, through and including June 30, 2009, without regard to the requirement that at least 80 percent of such person's gross receipts arising from rentals be from rentals of 92 days or less including all extensions.