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SENATE BILL NO. 1419

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 5, 2009)

(Patron Prior to Substitute—Senator Watkins)

A BILL 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 58.1-3510.4 through 58.1-3510.6, 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 daily rental property.

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 58.1-3510.4 through 58.1-3510.6, 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. 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.

Daily Rental Property Tax.

§58.1-3510.4. Daily rental property tax.

A. For purposes of this section, "daily rental property tax" 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. An average of not less than 80 percent of the gross rental receipts of such business during the preceding three calendar years arose from transactions involving rental 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. An average of not less than 60 percent of the gross receipts of such business during the preceding three calendar years arose from transactions involving rental to the public of equipment for direct use

60 in construction, agricultural, silvicultural, industrial, or mining operations for periods of 365
61 consecutive days or less, including all extensions and renewals to the same person or a person affiliated
62 with the lessee.

63 3. In the event that a person has been engaged in renting daily rental property for fewer than three
64 years, the computations required by subdivisions 1 and 2 shall be made with respect to the period
65 during which the business has been in operation. A person who has not previously been engaged in the
66 short-term rental business who applies for a certificate of registration pursuant to § 58.1-3510.5 shall be
67 eligible for registration upon his certification that he anticipates meeting the requirements of subdivision
68 1 or 2 during the year for which registration is sought. A short-term rental business that fails to meet
69 the test set forth in subdivision 1 or 2 shall not be certified for the tax year following the last year of
70 the test; however, there shall be no retroactive collection of personal property taxes or refund of daily
71 rental property taxes based solely upon the failure to meet the test. Any such business may become
72 recertified for the subsequent tax year upon a showing that it meets the test of subdivision 1 or 2 for ten
73 months or more of operations.

74 4. For purposes of this subsection, "affiliated" shall mean any common ownership interest in excess
75 of five percent of any officers, directors, partners, members, or shareholders in common with the lessor
76 and lessee. For purposes of this test, (i) any rental to a person affiliated with the lessor shall be treated
77 as rental receipts but shall not qualify for purposes of the 80 percent requirement of subdivision 1 or
78 the 60 percent requirement of subdivision 2, and (ii) any rental of personal property which also involves
79 the provision of personal services for the operation of the personal property rented shall not be treated
80 as gross receipts from rental. For purposes of this section, the delivery and installation of tangible
81 personal property shall not mean operation.

82 C. The governing body of any county, city, or town may levy a tax in an amount not to exceed one
83 percent, in addition to the tax levied pursuant to § 58.1-605, on the gross proceeds arising from rentals
84 of any person engaged in the short-term rental business as defined in subsection B. "Gross proceeds"
85 means the total amount charged to each person for the rental of daily rental property, excluding any
86 state and local sales tax paid under the provisions of Chapter 6 (§ 58.1-600 et seq.) of this title. Daily
87 rental property as to which a daily rental property tax is imposed and collected pursuant to this section
88 shall be exempt from taxation as tangible business personal property.

89 D. Any person engaged in the short-term rental business as defined in subsection B shall collect the
90 daily rental property tax from each lessee of the rental property at the time of the rental and shall
91 transmit a quarterly return to the commissioner of the revenue of the county or city or the designated
92 official of the town wherein the tax is collected, indicating the gross rental proceeds derived from the
93 short-term business. The commissioner of the revenue shall assess the tax due, and the treasurer or
94 director of finance shall collect the daily rental property tax.

95 E. Notwithstanding the provisions of subsection C, no tax shall be collected or assessed on (i)
96 rentals by the Commonwealth, any political subdivision of the Commonwealth or the United States or
97 (ii) any rental of durable medical equipment as defined in subdivision 10 of § 58.1-609.10.

98 F. Except for daily rental vehicles, property that is owned and rented by a person who is not
99 engaged in the short-term rental business, as defined in subsection B, shall be classified, assessed, and
100 taxed as tangible business personal property.

101 § 58.1-3510.5. Renter's certificate of registration.

102 Every person engaging in the short-term rental business, as defined in subsection B of § 58.1-3510.4,
103 shall file an application for a certificate of registration with the commissioner of the revenue of the
104 county, city, or town wherein the business is conducted. The application shall be on a form prescribed
105 by the commissioner of the revenue and shall set forth the name under which the applicant intends to
106 operate the rental business, the location, and such other information as the commissioner may require.

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

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

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

116 § 58.1-3510.6. Exemptions; penalties.

117 Provisions in §§ 58.1-609.1 through 58.1-609.11 of Chapter 6 relating to exemptions, §§ 58.1-635
118 and 58.1-636 relating to penalties, and § 58.1-625 relating to the manner of collecting the local retail
119 sales and use tax applicable in Chapter 6 (§ 58.1-600 et seq.) of this title, shall apply mutatis mutandis
120 to the daily rental property tax, except that the commissioner of revenue shall assess the tax due, and
121 the treasurer or director of finance shall collect the daily rental property tax, instead of the Department

122 *of Taxation. Any other provision in Chapter 6 shall apply if adopted by local ordinance pursuant to*
123 *§ 58.1-3510.4.*

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

125 **3. That the provisions of this act shall not become effective unless reenacted by the 2010 Regular**
126 **Session of the General Assembly. If the provisions of this act are reenacted by the 2010 Regular**
127 **Session of General Assembly, then the provisions of this act shall be effective for taxable years**
128 **beginning on or after January 1, 2010.**