

DEPARTMENT OF TAXATION

2009 Fiscal Impact Statement

1. **Patron** Phillip A. Hamilton

2. **Bill Number** HB 2059

3. **Committee** Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Local Meals Tax and County Food and Beverage Tax; Exemptions

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would expand the exemptions allowed to both the County Food and Beverage Tax and the Local Meals Tax to include food, beverages and meals sold by: i) restaurants to employees as part of their compensation; ii) schools to their students or employees; iii) hospitals and extended care facilities to patients; iv) day care centers; v) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; and vi) age-restricted apartment complexes or residences when included in rental fees. Exemptions would also include food, beverages and meals: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (b) provided by a public or private nonprofit charitable organization to elderly, infirm, blind, handicapped, or needy persons; and (c) provided by private establishments that contract with the appropriate agency to elderly, infirm, blind, handicapped, or needy persons.

This bill would expand the exemptions allowed to the Local Meals Tax to include meals sold by: i) volunteer fire departments and rescue squads, and nonprofit churches and organizations on an occasional basis; and ii) churches to their members.

This bill would amend the current exemption to the County Food and Beverage Tax for food and beverages sold by volunteer fire departments and rescue squads, and nonprofit churches and organizations on an occasional basis to provide that such sales may not occur more than 3 times per calendar year. Food and beverages sold by churches to their members would continue to be exempt from the County Food and Beverage Tax.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** No.

8. Fiscal implications:

This bill would have no impact on state revenues. To the extent that food, beverages, and meals sold in a locality qualify for the exemptions, this bill would result in a revenue loss to the locality.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Every county is authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as not to exceed four percent of the amount charged for such food and beverages. The tax must not be levied on food and beverages sold: i) through vending machines; ii) by boardinghouses that do not accommodate transients; iii) by cafeterias operated by industrial plants for employees; iv) volunteer fire departments and rescue squads, and nonprofit churches and organizations on an occasional basis; v) churches to their members; vi) nonprofit cafeterias in public schools; vii) by nursing homes; and vii) by hospitals. The tax also may not be levied on i) discretionary gratuities; ii) mandatory gratuities and service charges that do not exceed 20% of the sales price; and iii) alcoholic beverages sold in factory sealed containers. The tax does apply to prepared foods ready for human consumption sold at grocery stores and convenience stores.

The Counties of Arlington, Frederick, Montgomery, Roanoke, and Rockbridge are currently authorized to levy a tax on food and beverages sold for human consumption by a restaurant at a rate not to exceed four percent of the amount charged for such food and beverages. To impose the tax, the governing body must hold a public hearing before adopting a local food and beverage tax and the governing body must, by unanimous vote, adopt the tax by local ordinance.

Any city or town having general taxing powers is authorized to impose an excise tax on meals. The tax must not be levied on discretionary gratuities, mandatory gratuities and service charges that do not exceed 20% of the sales price, food and beverages sold through vending machines, on any tangible personal property purchased with food coupons or drafts, or on alcoholic beverages sold in factory sealed containers. In addition, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

Proposal

This bill would expand the exemptions allowed to both the County Food and Beverage Tax and the Local Meals Tax to include food, beverages and meals sold by: i) restaurants to employees as part of their compensation; ii) schools to their students or employees; iii) hospitals and extended care facilities to patients; iv) day care centers; v) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; and vi) age-restricted apartment complexes or residences when included in rental fees. Exemptions would also include food, beverages and meals: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (b) provided by a public or private nonprofit charitable organization to elderly, infirm, blind, handicapped, or needy persons; and (c) provided by private establishments that contract with the appropriate agency to elderly, infirm, blind, handicapped, or needy persons.

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cc : Secretary of Finance

Date: 2/24/2009 AM
DLAS File Name: HB2059FER161