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HOUSE BILL NO. 1150

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 58.1-605, 58.1-606, 58.1-608.3, 58.1-611.1, and 58.1-614 of the Code of Virginia, relating to local sales and use tax.

Patrons—Scott, J.M. and Kory

Referred to Committee on Finance**Be it enacted by the General Assembly of Virginia:**

1. That §§ 58.1-605, 58.1-606, 58.1-608.3, 58.1-611.1, and 58.1-614 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is

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59 increased by the annexation of territory since the last preceding school age population census, such
60 increase shall, for the purposes of this section, be added to the school age population of such town as
61 shown by the last such census and a proper reduction made in the school age population of the county
62 or counties from which the annexed territory was acquired.

63 H. One-half of such payments to counties are subject to the further qualification, other than as set
64 out in subsection G above, that in any county wherein is situated any incorporated town not constituting
65 a separate special school district which has complied with its charter provisions providing for the
66 election of its council and mayor for a period of at least four years immediately prior to the adoption of
67 the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for
68 general governmental purposes the proper proportionate amount received by him in the ratio that the
69 school age population of each such town bears to the school age population of the entire county, based
70 on the latest statewide school census. The preceding requirement pertaining to the time interval between
71 compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city.
72 If the school age population of any such town not constituting a separate special school district is
73 increased by the annexation of territory or otherwise since the last preceding school age population
74 census, such increase shall, for the purposes of this section, be added to the school age population of
75 such town as shown by the last such census and a proper reduction made in the school age population
76 of the county or counties from which the annexed territory was acquired.

77 I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its
78 discretion, appropriate funds to any incorporated town not constituting a separate school district within
79 such county which has not complied with the provisions of its charter relating to the elections of its
80 council and mayor, an amount not to exceed the amount it would have received from the tax imposed
81 by this chapter if such election had been held.

82 J. It is further provided that if any incorporated town which would otherwise be eligible to receive
83 funds from the county treasurer under subsection G or H of this section be located in a county which
84 does not levy a general retail sales tax under the provisions of this law, such town may levy a general
85 retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to
86 all the provisions of this section generally applicable to cities and counties. Any tax levied under the
87 authority of this subsection shall in no case continue to be levied on or after the effective date of a
88 county ordinance imposing a general retail sales tax in the county within which such town is located.

89 K. 1. *In addition to the one percent general retail sales tax authorized by this section, any county or*
90 *city may levy an additional one-half percent general retail sales tax. The council of any such city and*
91 *the governing body of any such county desiring to impose the additional local sales tax authorized*
92 *under this subsection may do so by the adoption of an ordinance stating its purpose and referring to*
93 *this subsection, and providing that such ordinance shall be effective the first day of a month at least 60*
94 *days after its adoption.*

95 2. *All tax moneys collected by the Tax Commissioner and attributable to the additional local sales*
96 *tax authorized under this subsection shall be paid into the state treasury to the credit of a special fund*
97 *that is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes for*
98 *Education." Such moneys shall be credited to the account of each particular city or county levying such*
99 *additional local sales tax. The basis of such credit shall be the city or county in which the sales were*
100 *made as shown by the records of the Department and certified by it monthly to the Comptroller, namely,*
101 *the city or county of location of each place of business of every dealer paying the tax to the*
102 *Commonwealth without regard to the city or county of possible use by the purchasers.*

103 3. *All moneys distributed to a county or city from the "Collections of Local Sales Taxes for*
104 *Education" special fund shall be used for education purposes. For purposes of this section, "education*
105 *purposes" means capital projects for public school construction and public school infrastructure*
106 *improvements including, but not limited to, technology infrastructure; additions to, renovations of, and*
107 *retrofitting of existing school buildings; new school construction; site acquisition; and debt service*
108 *payments, but only for debt service payments on such capital projects completed subsequent to July 1,*
109 *1997, but prior to July 1, 2009.*

110 4. *The provisions of subsections A, B, C, D, E, and F shall be applicable to the tax authorized under*
111 *this subsection for purposes of administration and distribution of moneys collected.*

112 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;
113 collection thereof by Commonwealth and return of revenues to the cities and counties.

114 A. The council of any city and the governing body of any county which has levied or may hereafter
115 levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one
116 percent to provide revenue for the general fund of such city or county. Such tax shall be added to the
117 rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter,
118 and all amendments thereof, and the rules and regulations published with respect thereto, except that no
119 discount under § 58.1-622 shall be allowed on a local use tax.

120 B. The council of any city and the governing body of any county desiring to impose a local use tax

under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded ye and nay vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § 58.1-605.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

F. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § 58.1-605 with respect to local sales tax revenue.

H. 1. In addition to the one percent use tax authorized by this section, any county or city that may levy the sales tax pursuant to subsection K of § 58.1-605 may levy an additional one-half percent local use tax as provided in this subsection.

2. If the city or county imposes the additional local sales tax authorized by subsection K of § 58.1-605, the additional local use tax authorized under this subsection must be imposed by the council of the city or governing body of the county. Such tax must be imposed by the same ordinance imposing the tax pursuant to subdivision K 1 of § 58.1-605 and pursuant to the same conditions. The tax shall be administered in the same manner as provided in subsection K of § 58.1-605.

3. All tax moneys collected by the Tax Commissioner and attributable to the additional local use tax authorized under this subsection shall be paid into the state treasury to the credit of the "Collections of Local Sales Taxes for Education" special fund established under subdivision K 2 of § 58.1-605. Such moneys shall be credited to the cities or counties levying the additional local use tax in the same manner as provided in subsection K of § 58.1-605, and used for the purposes set forth in subdivision K 3 of § 58.1-605.

§ 58.1-608.3. Entitlement to certain sales tax revenues.

A. As used in this section, the following words and terms have the following meanings, unless some other meaning is plainly intended:

"Bonds" means any obligations of a municipality for the payment of money.

"Cost," as applied to any public facility or to extensions or additions to any public facility, includes:

(i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of the capital stock of the corporation owning the public facility and the amount to be paid to discharge any obligations in order to vest title to the public facility or any part of it in the municipality; (ii) expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land, property, rights, easements and franchises acquired; (v) the cost of improvements, property or equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of construction or reconstruction; (viii) the cost of all labor, materials, machinery and equipment; (ix) financing charges; (x) interest before and during construction and for up to one year after completion of construction; (xi) start-up costs and operating capital; (xii) payments by a municipality of its share of the cost of any multijurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to the financing of the public facility. Any obligation or expense incurred by the public facility in connection with any of the foregoing items of cost may be regarded as a part of the cost.

"Municipality" means any county, city, town, authority, commission, or other public entity.

"Public facility" means (i) any auditorium, coliseum, convention center, sports facility that is designed for use primarily as a baseball stadium for a minor league professional baseball affiliated team or structures attached thereto, or conference center, which is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings, conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is owned by a foundation whose sole purpose is to benefit a state-supported university and which is attached to and is an integral part of such facility, together with any lands reasonably necessary for the conduct of the operation of such events; or (iii) any hotel which is attached to and is an integral part of such facility. However, such public facility must be located in the City of Hampton, City of Newport News, City of Norfolk, City of Portsmouth, City of Richmond, City of Roanoke, City of Salem, City of Staunton, City of Suffolk, or City of Virginia Beach. Any property, real, personal, or mixed, which is necessary or desirable in connection with any such auditorium, coliseum, convention center, baseball stadium or conference center, including, without limitation, facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. A public facility shall not include residential condominiums, townhomes, or other residential units. In addition, only a new public facility, or a public facility which will undergo a substantial and significant renovation or expansion, shall be eligible under subsection B of this section. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least 50 percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least 50 percent over that existing in the preexisting facility and shall have begun after December 31, 1991; or an increase in floor space of at least 10 percent over that existing in a public facility that qualified as such under this section and was constructed after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) of this title, as limited herein. "Sales tax revenues" does not include (i) the revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § 33.1-23.03:1, ~~nor shall it include~~ (ii) the one percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § 58.1-638 on the basis of school age population, and (iii) *the revenue generated by the additional one-half percent local sales tax authorized under subsection K of § 58.1-605, and the revenue generated by the additional one-half percent local use tax authorized under subsection H of § 58.1-606.* For a public facility that is a sports facility, "sales tax revenues" shall include such revenues generated by transactions taking place upon the premises of a baseball stadium or structures attached thereto.

B. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, (v) on or after July 1, 2001, but before July 1, 2005, (vi) on or after July 1, 2004, but before July 1, 2007, or (vii) on or after July 1, 2009, but before July 1, 2012, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such bonds, which entitlement shall not exceed 35 years,

and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed.

C. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any bonds. Any appropriation made pursuant to this section shall be made only from sales tax revenues derived from the public facility for which bonds may have been issued to pay the cost, in whole or in part, of such public facility.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 and 58.1-606.

C. *The tax imposed pursuant to subsection K of §58.1-605 and subsection H of § 58.1-606 shall not apply to food purchased for human consumption.*

D. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

§ 58.1-614. Vending machine sales.

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on four and one-half percent through midnight on July 31, 2004, and five percent beginning on and after August 1, 2004, of such wholesale purchases, *except that such wholesale purchases shall be taxed at five and one-half percent in any city or county that levies the additional local sales tax authorized under subsection K of § 58.1-605.*

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax *and, if applicable, the additional one-half percent local sales and use tax provided under this chapter*, computed as provided in subsection A of this section.

C. The provisions of subsections A and B of this section shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than 10 cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section, when the Tax Commissioner determines that

305 it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required
306 to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the
307 sales tax.

308 E. The provisions of this section shall not be applicable to any dealer who fails to maintain records
309 satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through
310 vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each
311 county or city in which he has machines.