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SENATE BILL NO. 280

Senate Amendments in [] — January 22, 2010

A BILL to amend and reenact §§ 58.1-3833, 58.1-3834, and 58.1-3842 of the Code of Virginia, relating to local food and beverage tax.

Patron Prior to Engrossment—Senator Quayle

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3833, 58.1-3834, and 58.1-3842 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, ~~not to exceed four percent of the amount charged for such food and beverages at a rate established in the local ordinance.~~ *The tax shall be computed based upon the amount charged for such food and beverages.* Such tax shall not be levied on food and beverages sold through vending machines or by: (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three times per calendar year as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools, colleges, and universities to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a

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60 tax on food and beverages sold for human consumption by a restaurant, as such term is defined in
61 § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four
62 percent of the amount charged for such food and beverages; provided that the governing body of the
63 respective *The tax authorized pursuant to this section shall only be imposed if the governing body of the*
64 county holds a public hearing before adopting a local food and beverage tax, and the governing body by
65 unanimous vote adopts such tax by local ordinance *imposing the tax is adopted by a majority vote of the*
66 *[elected] members of the governing body of the county.* The tax shall be effective in an amount and on
67 such terms as the governing body may by ordinance prescribe.

68 *No increase in the tax authorized pursuant to this section shall become effective unless the governing*
69 *body of the county holds a public hearing before adopting such increase, and the local ordinance*
70 *increasing the tax is adopted by a majority vote of the [elected] members of the governing body of the*
71 *county.*

72 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
73 prior to July 1, 2010, to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711
74 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections
75 and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing
76 the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the
77 same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

78 D. No county which has heretofore that has adopted an ordinance pursuant to subsection A of this
79 section prior to July 1, 2010, shall be required to submit an amendment to its meals tax ordinance to
80 the voters in a referendum. *No county that is proposing to adopt an ordinance pursuant to this section*
81 *on or after July 1, 2010, shall be required to submit the proposed meal tax ordinance to the voters in a*
82 *referendum.*

83 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
84 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition
85 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or
86 service charge added by the restaurant in addition to the sales price, but only to the extent that such
87 mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages
88 sold in factory sealed containers and purchased for off-premises consumption or food purchased for
89 human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended,
90 and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad
91 bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment
92 of vegetables, and nonfactory sealed beverages.

93 § 58.1-3834. Apportionment of food and beverage or meals tax.

94 In any case where a business is located partially within two or more local jurisdictions by reason of
95 the boundary line between the local jurisdictions passing through such place of business, and one or
96 more of the local jurisdictions imposes the food and beverage or meals tax, the tax rate shall be
97 computed by applying the apportionment formula in § 58.1-3709 to the food and beverage or meals tax
98 rate of each applicable local jurisdiction. Such apportioned rate shall be rounded to the nearest one-half
99 percent; provided, the total tax rate shall not exceed the rate authorized in § 58.1-3833.

100 § 58.1-3842. Combined transient occupancy and food and beverage tax.

101 A. Rappahannock County, by duly adopted ordinance, is hereby authorized to levy a tax on
102 occupancy in a bed and breakfast establishment on which the county is authorized to levy a transient
103 occupancy tax under § 58.1-3819 and on food and beverages sold for human consumption within such
104 establishment on which the county is authorized to levy a food and beverage tax under § 58.1-3833,
105 when the charges for the occupancy of the room or space and for the sale of food and beverages are
106 assessed in the aggregate and not separately stated. Such tax shall not exceed four percent of the total
107 amount charged for the occupancy of the room or space occupied and for the food and beverages the
108 county's rate of tax pursuant to § 58.1-3833. *The tax shall be computed based upon the total amount*
109 *charged for the occupancy of the room or space occupied and for the food and beverages.* Such tax
110 shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. The tax
111 shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter
112 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the
113 governing body. All taxes collected under the authority of this article shall be deemed to be held in trust
114 for the county imposing the tax.

115 B. If a bed and breakfast establishment separately states charges for the occupancy of the room or
116 space and for the sale of food and beverages, a transient occupancy tax levied under § 58.1-3819 and a
117 food and beverage tax levied under § 58.1-3833 shall apply to such separately stated charges, as
118 applicable.

119 C. Any tax imposed pursuant to this article shall not apply within the limits of any town located in
120 such county, where such town now, or hereafter, imposes a town meals tax or a town transient
121 occupancy tax on the same subject. If the governing body of any town within a county, however,

122 provides that a county tax authorized by this article shall apply within the limits of such town, then such
123 tax may be imposed within such towns.

124 D. This tax shall be levied only if a food and beverage tax has been approved in a referendum
125 within the county *held prior to July 1, 2010; or, on or after July 1, 2010, has been adopted by a*
126 *majority vote of the [~~elected~~] members of the governing body of the county* as provided by ~~the second~~
127 ~~paragraph of subsection A~~ *subsection B* of § 58.1-3833. No county in which the levy of a food and
128 beverage tax has been approved in a referendum ~~pursuant to subsection A of § 58.1-3833~~ *prior to July*
129 *1, 2010*, shall be required to submit an amendment to its meals tax ordinance or a further question to
130 the voters in a referendum prior to adopting an ordinance adopting or amending the tax authorized by
131 this ~~article~~ *section*.

132 E. Nothing herein contained shall affect any authority heretofore granted to any county, *prior to July*
133 *1, 2010*, to levy a food and beverage tax or a transient occupancy tax.

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