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SENATE BILL NO. 355

Offered January 13, 2010

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A BILL to amend and reenact §§ 58.1-3500, 58.1-3510.4, 58.1-3510.6, 58.1-3704, and 58.1-3706 of the Code of Virginia, relating to local taxation of short-term rental property.

 Patron—Obenshain

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3500, 58.1-3510.4, 58.1-3510.6, 58.1-3704, and 58.1-3706 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3500. Defined and segregated for local taxation.

Tangible personal property shall consist of all personal property not otherwise classified by (i) § 58.1-1100 as intangible personal property ~~or by~~, (ii) § 58.1-3510 as merchants' capital, *or (iii) § 58.1-3510.4 as short-term rental property.* Such tangible personal property is hereby segregated for and made subject to local taxation only pursuant to Article X, Section 4 of the Constitution of Virginia.

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

A. For purposes of this ~~section~~ *article*, "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.

Short-term rental property shall constitute a classification of merchants' capital that is separate from other classifications of merchants' capital. For local property taxation purposes, the governing body of any county, city, or town may tax short-term rental property pursuant to § 58.1-3509 or may impose the tax authorized under § 58.1-3510.6, but not both.

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

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

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

76 § 58.1-3510.6. Short-term rental property tax.

77 A. The governing body of any county, city, or town may levy a tax in an amount not to exceed one
78 percent, in addition to the tax levied pursuant to § 58.1-605, on the gross proceeds arising from rentals
79 of any person engaged in the short-term rental business as defined in § 58.1-3510.4 B 1. "Gross
80 proceeds" means the total amount charged to each person for the rental of short-term rental property,
81 excluding any state and local sales tax paid under the provisions of Chapter 6 (§ 58.1-600 et seq.) of
82 this title. The imposition and collection of a short-term rental property tax pursuant to this section with
83 respect to rental property shall be in lieu of taxation of such rental property as tangible business
84 personal property in the same tax year.

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

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

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

106 E. Except for daily rental vehicles pursuant to § 58.1-3510 and short-term rental property, rental
107 property shall be classified, assessed and taxed as tangible personal property if such property:

108 1. Is owned and rented by a person not engaged in the short-term rental business, as defined in
109 § 58.1-3510.4; or

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

113 § 58.1-3704. License tax on merchants in lieu of merchants' capital tax.

114 Whenever any county, city or town imposes a license tax on merchants, the same shall be in lieu of
115 a tax on the capital of merchants, as defined by §§ 58.1-3509 and 58.1-3510.4; however, no county, city
116 or town shall be required to impose either a license tax on merchants or a tax on the capital of
117 merchants.

118 § 58.1-3706. Limitation on rate of license taxes.

119 A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703,
120 no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712, 58.1-3712.1

and 58.1-3713, or any other provision of this title or any charter, shall be imposed on any person whose gross receipts from a business, profession or occupation subject to licensure are less than: (i) \$100,000 in any locality with a population greater than 50,000; or (ii) \$50,000 in any locality with a population of 25,000 but no more than 50,000. Any business with gross receipts of more than \$100,000, or \$50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the class of enterprise listed:

1. For contracting, and persons constructing for their own account for sale, sixteen cents per \$100 of gross receipts;

2. For retail sales, twenty cents per \$100 of gross receipts;

3. For financial, real estate and professional services, fifty-eight cents per \$100 of gross receipts; and

4. For repair, personal and business services, and all other businesses and occupations not specifically listed or excepted in this section, thirty-six cents per \$100 of gross receipts.

The rate limitations prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi) itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed by § 58.1-3729; (viii) savings institutions and credit unions, which shall be governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct sellers, which shall be governed by § 58.1-3719.1.

B. Any county, city or town which had, on January 1, 1978, a license tax rate, for any of the categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the following conditions:

1. A locality may not increase a rate on any category which is at or above the maximum prescribed for such category in subsection A.

2. If a locality increases the rate on a category which is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories which are above such maximum.

3. A locality shall lower rates on categories which are above the maximums prescribed in subsection A for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue received from all categories in tax year 1980, plus one-third of the amount, if any, by which such revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.

C. Any person engaged in the short-term rental business as defined in ~~§ 58.1-3510~~ § 58.1-3510.4 shall be classified in the category of retail sales for license tax rate purposes.

D. 1. Any person, firm, or corporation designated as the principal or prime contractor receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences shall be subject to a license tax rate not to exceed three cents per \$100 of such federal funds received in payment of such contracts upon documentation provided by such person, firm or corporation to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by that locality in accordance with subdivision 1 of this subsection, and on which a license tax is due and paid, or which gross receipts defined by subdivision 1 of this subsection are properly reported to but exempted by a Virginia locality from taxation, shall not be subject to local license taxation by any other locality in the Commonwealth.

3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county manager plan of government, the following shall govern the taxation of the licensees described in subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors

182 receiving identifiable federal appropriations for research and development services as defined in
183 § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic
184 systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v)
185 electronic and physical sciences may be separately classified by any such county and subject to tax at a
186 license tax rate not to exceed the limits set forth in subsections A through C above as to such federal
187 funds received in payment of such contracts upon documentation provided by such persons, firms, or
188 corporations to the local commissioner of revenue or finance officer confirming the applicability of this
189 subsection.

190 E. In any case in which the Department of Mines, Minerals and Energy determines that the weekly
191 U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District
192 - Lower Atlantic Region) has increased by 20% or greater in any one-week period over the immediately
193 preceding one-week period and does not fall below the increased rate for at least 28 consecutive days
194 immediately following the week of such increase, then, notwithstanding any tax rate on retailers imposed
195 by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in the following
196 license year shall not exceed 110% of the gross receipts taxes on fuel sales made by such retailer in the
197 license year of such increase. For license years beginning on or after January 1, 2006, every gas retailer
198 shall maintain separate records for fuel sales and nonfuel sales and shall make such records available
199 upon request by the local tax official.

200 The provisions of this subsection shall not apply to any person or entity (i) not conducting business
201 as a gas retailer in the county, city, or town for the entire license year immediately preceding the license
202 year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to
203 § 58.1-3703 for the license year immediately preceding the license year of such increase.

204 The Department of Mines, Minerals and Energy shall determine annually if such increase has
205 occurred and remained in effect for such 28-day period.

206 **2. That the provisions of this act shall be effective for tax years beginning on and after January 1,**
207 **2011, and with regard to any tax imposed pursuant to Chapter 37 (§ 58.1-3700 et seq.) of Title**
208 **58.1 of the Code of Virginia for license years beginning subsequent to December 31, 2010.**