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SENATE BILL NO. 90

Offered January 13, 2010

Prefiled January 6, 2010

A BILL to amend and reenact § 58.1-3700.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-3732.5, relating to the local license tax on registered security brokers and security dealers.

 Patron—Quayle

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3700.1 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 58.1-3732.5 as follows:

§ 58.1-3700.1. Definitions.

For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless otherwise required by the context:

"Affiliated group" means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

b. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

3. Two or more entities if such entities satisfy the requirements in subdivision 1 or 2 of this definition as if they were corporations and the ownership interests therein were stock.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of

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SB90

59 dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one
60 business. The following acts shall create a rebuttable presumption that a person is engaged in a business:
61 (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or
62 (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or
63 business.

64 "Definite place of business" means an office or a location at which occurs a regular and continuous
65 course of dealing for thirty consecutive days or more. A definite place of business for a person engaged
66 in business may include a location leased or otherwise obtained from another person on a temporary or
67 seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite
68 place of business if there is no definite place of business maintained elsewhere and the person is not
69 subject to licensure as a peddler or itinerant merchant.

70 "Entity" means a business organization, other than a sole proprietorship, that is a corporation, limited
71 liability company, limited partnership, or limited liability partnership duly organized under the laws of
72 the Commonwealth or another state.

73 "Financial services" means the buying, selling, handling, managing, investing, and providing of
74 advice regarding money, credit, securities, or other investments.

75 "Fuel sale" or "fuel sales" shall mean retail sales of alternative fuel, blended fuel, diesel fuel,
76 gasohol, or gasoline, as such terms are defined in § 58.1-2201.

77 "Gas retailer" means a person or entity engaged in business as a retailer offering to sell at retail on a
78 daily basis alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in
79 § 58.1-2201.

80 "Gross receipts" means the whole, entire, total receipts, without deduction.

81 "*Independent registered representative*" means an independent contractor registered with the United
82 States Securities and Exchange Commission.

83 "License year" means the calendar year for which a license is issued for the privilege of engaging in
84 business.

85 "Professional services" means services performed by architects, attorneys-at-law, certified public
86 accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing
87 arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of
88 human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and
89 no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to
90 § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed
91 knowledge of some department of science or learning, gained by a prolonged course of specialized
92 instruction and study, is used in its practical application to the affairs of others, either advising, guiding,
93 or teaching them, and in serving their interests or welfare in the practice of an art or science founded on
94 it. The word "profession" implies attainments in professional knowledge as distinguished from mere
95 skill, and the application of knowledge to uses for others rather than for personal profit.

96 "Purchases" means all goods, wares and merchandise received for sale at each definite place of
97 business of a wholesale merchant. The term shall also include the cost of manufacture of all goods,
98 wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A
99 wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares
100 and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of
101 manufacture.

102 "Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or
103 appraisal of real property.

104 "*Security broker*" means a "broker" as such term is defined under the Securities Exchange Act of
105 1934 (15 U.S.C. § 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is
106 registered with the United States Securities and Exchange Commission.

107 "*Security dealer*" means a "dealer" as such term is defined under the Securities Exchange Act of
108 1934 (15 U.S.C. § 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is
109 registered with the United States Securities and Exchange Commission.

110 § 58.1-3732.5. Limitation on gross receipts of security brokers and dealers.

111 Gross receipts of a security broker or security dealer for license tax purposes under this chapter
112 shall not include amounts received by the broker or dealer that arise from the sale or purchase of a
113 security to the extent that such amounts are paid to an independent registered representative as a
114 commission on any sale or purchase of a security. The broker or dealer claiming the exclusion shall
115 identify on the person's license application each independent registered representative to whom the
116 excluded receipts have been paid and, if applicable, the jurisdictions in the Commonwealth of Virginia
117 to which the independent registered representative is subject to business license taxes.