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SENATE BILL NO. 1408

Offered January 18, 2011

A *BILL to amend and reenact § 58.1-3703 of the Code of Virginia, relating to limitation of local government authority to impose the business, professional, occupational license tax.*

Patrons—Ruff and Martin

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-3703 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed \$100 for any locality with a population greater than 50,000, \$50 for any locality with a population of 25,000 but no more than 50,000 and \$30 for any locality with a population smaller than 25,000. For purposes of this section, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. Such governing body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed \$50 by January 1, 2000. The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private businesses and industries entering into agreements for the establishment, installation, renovation, remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

C. No county, city, or town shall impose a license fee or levy any license tax:

1. On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by other provisions of law;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses, and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

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8. [Repealed.]

9. On or measured by receipts for management, accounting, or administrative services provided on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by an entity which is a member of an affiliated group of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated entities from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in § 51.5-98;

15. [Expired.]

16. [Repealed.]

17. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;

18. (a) On or measured by receipts of a charitable nonprofit organization except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "charitable nonprofit organization" means an organization which is described in Internal Revenue Code § 501(c) (3) and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning.

(b) On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations;

19. On any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located provided the locality is otherwise authorized to tax such businesses and rental of real estate;

20. On total assessments paid by condominium unit owners for common expenses. "Common expenses" and "unit owner" have the same meanings as in § 55-79.41; or

21. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof or by the United States as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law; or

22. For taxable years beginning on or after January 1, 2012, on any business that loses money and does not have a profit for the taxable year and offers the income tax return of the business as proof of the losses to the local commissioner of the revenue. Eligibility for this exemption shall be determined annually and it shall be the obligation of the business owner to submit the applicable income tax return to the local commissioner of the revenue.