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HOUSE BILL NO. 10

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on January 30, 2012)

(Patron Prior to Substitute—Delegate Cole)

A BILL to amend and reenact §§ 58.1-3702 and 58.1-3706 of the Code of Virginia, relating to the imposition of local license taxes.

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-3702 and 58.1-3706 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-3702. Authority of counties, cities, and towns.

A. The provisions of this chapter shall be the sole authority for counties, cities, and towns for the levying of the license taxes described herein. Except as provided herein, the governing body of every county, city, and town that levies such license tax may impose the tax on (i) the gross receipts of the Virginia taxable income of the business or (ii) the Virginia taxable income of a corporation, the net income of a sole proprietorship, and the net income of a pass-through entity. For all businesses upon which a county, city, or town levies the license tax, it shall use the tax base under clause (i) for all such businesses or the tax base under clause (ii) for all such businesses.

B. 1. The Virginia taxable income of a corporation shall be calculated pursuant to the provisions of § 58.1-322 or 58.1-402, whichever is applicable to the business.

2. Throughout this chapter, except in § 58.1-3731, wherever the term "gross receipts" is used, the term "Virginia taxable income" shall be substituted whenever a county, city, or town selects it uses (i) Virginia taxable income as the base on which to levy the license tax upon corporations, then wherever the term "gross receipts" is used, the term "Virginia taxable income" shall be substituted, and (ii) net income as the base on which to levy the license tax on sole proprietorships and pass-through entities, then wherever the term "gross receipts" is used, the term "net income" shall be substituted.

C. If (i) a business has a definite place of business in more than one county, city, or town in the Commonwealth, or in more than one state including a jurisdiction in the Commonwealth, and (ii) a county, city, or town in the Commonwealth in which the business has a definite place of business levies the license tax on such business based on Virginia taxable income or net income, as applicable, then Virginia taxable income or net income shall be apportioned to such definite place of business on the basis of payroll, regardless of the situs rules of § 58.1-3703.1.

D. 1. Notwithstanding any other provision of this section, a county, city, or town imposing the license tax pursuant to § 58.1-3715 shall impose the tax (i) using the tax base provided under such section and (ii) in accordance with all other provisions of such section.

2. Notwithstanding any other provision of this section, a county, city, or town imposing the license tax pursuant to § 58.1-3716, 58.1-3719.1, or 58.1-3731 shall impose the tax (i) using the tax base provided under the respective section and (ii) at a rate not to exceed the maximum tax rate under the respective section.

3. Notwithstanding any other provision of this section, a county, city, or town imposing the tax pursuant to § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 shall impose the tax using the tax base and the sourcing or situs rules under the respective section and in accordance with all other provisions of the respective section.

4. Any county, city, or town, including one that did not impose the taxes under this chapter for the 2011 license year, shall be subject to the license tax rules under subdivisions 1 through 3 for purposes of imposing the tax under this chapter.

E. Notwithstanding any other provision of this section, if a county, city, or town levies the license tax under this chapter on the Virginia taxable income of a corporation and the net income of sole proprietorships and pass-through entities, the provisions of §§ 58.1-3732, 58.1-3732.2 through 58.1-3732.5, 58.1-3734, and 58.1-3734.1 shall not apply.

F. For purposes of this section, "pass-through entity" means the same as such term is defined in § 58.1-390.1.

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

A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703, 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

60 enterprise listed:

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

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

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

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

67 The rate limitations prescribed in this section shall not be applicable to license taxes on (i)
68 wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be
69 governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by
70 § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi)
71 itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums,
72 arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public,
73 which shall be governed by § 58.1-3729; (viii) savings institutions and credit unions, which shall be
74 governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct
75 sellers, which shall be governed by § 58.1-3719.1.

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

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

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

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

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

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

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

113 3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county
114 manager plan of government, the following shall govern the taxation of the licensees described in
115 subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors
116 receiving identifiable federal appropriations for research and development services as defined in
117 § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic
118 systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v)
119 electronic and physical sciences may be separately classified by any such county and subject to tax at a
120 license tax rate not to exceed the limits set forth in subsections A through C above as to such federal
121 funds received in payment of such contracts upon documentation provided by such persons, firms, or

corporations to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

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

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

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

F. Notwithstanding any other provision of law, a locality shall not impose a fee or tax pursuant to this chapter in excess of the rate of such fee or tax imposed by the locality for the 2011 license year. The provisions of this subsection shall expire for the 2015 license year and for each license year thereafter.