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HOUSE BILL NO. 1157

Offered January 16, 2012

A *BILL to amend and reenact §§ 4.1-128, 15.2-1200, 15.2-5517, 15.2-5814, 55-248.5, 58.1-3823, 58.1-3825, 58.1-3834, 58.1-3840, and 58.1-3842 of the Code of Virginia and to repeal §§ 58.1-3817, 58.1-3818, 58.1-3818.01, 58.1-3819 through 58.1-3822, 58.1-3824, 58.1-3825.1, 58.1-3825.2, 58.1-3830, 58.1-3831, 58.1-3832, and 58.1-3833 of the Code of Virginia, relating to local government taxing authority.*

Patrons—Merricks, Edmunds and Marshall, D.W.; Senator: Carrico

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. **That §§ 4.1-128, 15.2-1200, 15.2-5517, 15.2-5814, 55-248.5, 58.1-3823, 58.1-3825, 58.1-3834, 58.1-3840, and 58.1-3842 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-128. Local ordinances or resolutions regulating or taxing alcoholic beverages.

A. No county, city, or town shall, except as provided in § 4.1-205 or § 4.1-129, adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law at a licensed farm winery.

No provision of law, general or special, shall be construed to authorize any county, city or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other than the taxes authorized by §§ 58.1-605, ~~58.1-3833~~ or § 58.1-3840. The foregoing limitation shall not affect the authority of any county, city or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were nonalcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance which (i) prohibits the acts described in subsection A of § 4.1-308 subject to the provisions of subsection B of § 4.1-308, or the acts described in § 4.1-309 and may provide a penalty for violation thereof and (ii) subject to subsection C of § 4.1-308, regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

§ 15.2-1200. General powers of counties.

A. Any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth. Such power shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.

B. Notwithstanding any contrary provision of law, counties shall have the all the powers of taxation granted to municipalities in § 15.2-1104, regardless of whether such powers are established by county charter.

§ 15.2-5517. One or more localities may create authority.

The governing body of a locality may by ordinance or resolution, or the governing bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, create a tourism financing development authority for the purpose of supporting tourism infrastructure in localities. The name of the authority shall contain the word "authority." The authority shall be a public body politic and corporate. Any such locality that levies a transient occupancy tax pursuant to ~~§ 58.1-3819~~ *58.1-3840* shall designate any excess over two percent to be used for purposes of the authority except such revenues that are otherwise encumbered by the locality.

§ 15.2-5814. Entitlement to sales tax revenues derived from a major league baseball stadium.

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59 A. In connection with the issuance of bonds by the Authority to finance or refinance a major league
60 baseball stadium, the Authority shall be entitled to all sales tax revenues that are generated by
61 transactions taking place upon the premises of the major league baseball stadium. Such entitlement shall
62 continue for the lifetime of such bonds, but that entitlement shall not exceed thirty years. Sales tax
63 revenues may be applied to repayment of the bonds, stadium operating expenses, master lease rental
64 payments by the Commonwealth, capital expenditures and other purposes of the Authority. The State
65 Comptroller shall remit such sales tax revenues to the Authority on a quarterly basis, subject to such
66 reasonable processing delays as may be required by the Department of Taxation to calculate the actual
67 net sales tax revenues generated by transactions taking place upon the premises of the major league
68 baseball stadium. The State Comptroller shall make such remittances to the Authority, as provided
69 herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act
70 (§ 58.1-600 et seq.).

71 B. In connection with the issuance of bonds by the Authority to finance or refinance a major league
72 baseball stadium, the local governing body of the locality in which the stadium is located may direct, by
73 ordinance or resolution, that all local sales and use tax revenues generated by transactions taking place
74 upon the premises of the major league stadium from taxes levied pursuant to §§ 58.1-605 and 58.1-606
75 shall be remitted by the State Comptroller to the Authority for the repayment of bonds, stadium
76 operating expenses, master lease rental payments by the Commonwealth, capital expenditures and other
77 purposes of the Authority. Such remittances shall be for the same period and under the same conditions
78 as remittances to the Authority paid in accordance with subsection A, mutatis mutandis.

79 C. In connection with the issuance of bonds by the Authority to finance or refinance a major league
80 baseball stadium, the local governing body of the locality in which the stadium is located may direct, by
81 ordinance or resolution, that all admissions tax revenues of such locality generated by admissions to the
82 major league stadium from taxes levied pursuant to ~~§§ 58.1-3818 and~~ 58.1-3840 shall be remitted to the
83 Authority for the repayment of bonds, stadium operating expenses, master lease rental payments by the
84 Commonwealth, capital expenditures and other purposes of the Authority. Any levy pursuant to this
85 section may be for the lifetime of such bonds, but such levy shall not exceed thirty years.

86 § 55-248.5. Exemptions; exception to exemption.

87 A. Except as specifically made applicable by § 55-248.21:1, the following conditions are not
88 governed by this chapter:

89 1. Residence at a public or private institution, if incidental to detention or the provision of medical,
90 geriatric, educational, counseling, religious or similar services;

91 2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the
92 occupant is the purchaser or a person who succeeds to his interest;

93 3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated
94 for the benefit of the organization;

95 4. Occupancy in a hotel, motel, vacation cottage, boardinghouse or similar lodging held out for
96 transients, unless let continuously to one occupant for more than ~~thirty~~ 30 days, including occupancy in
97 a lodging subject to taxation as provided in *former* § 58.1-3819 *as such section was in effect on June*
98 *30, 2012*;

99 5. Occupancy by an employee of a landlord whose right to occupancy is conditioned upon
100 employment in and about the premises or an ex-employee whose occupancy continues less than sixty
101 days;

102 6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

103 7. Occupancy under a rental agreement covering premises used by the occupant primarily in
104 connection with business, commercial or agricultural purposes;

105 8. Occupancy in a public housing unit or other housing unit subject to regulation by the Department
106 of Housing and Urban Development where such regulation is inconsistent with this chapter;

107 9. Occupancy by a tenant who pays no rent; and

108 10. Occupancy in single-family residences where the owner(s) are natural persons or their estates
109 who own in their own name no more than ten single-family residences subject to a rental agreement; or
110 in the case of condominium units or single-family residences located in any city or in any county having
111 either the urban county executive form or county manager plan of government, no more than four.

112 B. Notwithstanding the provisions of subsection A, the landlord may specifically provide for the
113 applicability of the provisions of this chapter in the rental agreement.

114 § 58.1-3823. Transient occupancy tax for certain counties.

115 A. ~~In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through~~
116 ~~58.1-3822, Hanover County, Chesterfield County and Henrico County may impose:~~

117 1. ~~An additional transient occupancy tax not to exceed four percent of the amount of the charge for~~
118 ~~the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or~~
119 ~~spaces rented and continuously occupied by the same individual or same group of individuals for 30 or~~
120 ~~more days. The revenues collected from the additional tax shall be designated and spent for promoting~~

tourism, travel or business that generates tourism or travel in the Richmond metropolitan area; and

2. An additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for expanding the Richmond Centre, a convention and exhibition facility in the City of Richmond.

3. An additional transient occupancy tax not to exceed one percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for the development and improvement of the Virginia Performing Arts Foundation's facilities in Richmond, for promoting the use of the Richmond Centre and for promoting tourism, travel or business that generates tourism and travel in the Richmond metropolitan area.

B. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, any county with the county manager plan of government may impose an additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied, provided the county's governing body approves the construction of a county conference center. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for the design, construction, debt payment, and operation of such conference center.

CA. 1. In addition to such *the* transient occupancy taxes as are *tax* authorized by §§ 58.1-3819 through 58.1-3822 § 58.1-3840, the Counties of James City and York may impose an additional *a* transient occupancy tax not to exceed \$2 per room per night for the occupancy of any overnight guest room. The revenues collected from the *additional tax under this section* shall be designated and expended solely for advertising the Historic Triangle area, which includes all of the City of Williamsburg and the Counties of James City and York, as an overnight tourism destination by the members of the Williamsburg Area Destination Marketing Committee of the Greater Williamsburg Chamber and Tourism Alliance. The tax imposed by this subsection shall not apply to travel campground sites or to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

2. The Williamsburg Area Destination Marketing Committee shall consist of the members as provided herein. The governing bodies of the City of Williamsburg, the County of James City, and the County of York shall each designate one of their members to serve as members of the Williamsburg Area Destination Marketing Committee. These three members of the Committee shall have two votes apiece. In no case shall a person who is a member of the Committee by virtue of the designation of a local governing body be eligible to be selected a member of the Committee pursuant to subdivision a.

a. Further, one member of the Committee shall be selected by the Board of Directors of the Williamsburg Hotel and Motel Association; one member of the Committee shall be from The Colonial Williamsburg Foundation and shall be selected by the Foundation; one member of the Committee shall be an employee of Busch Gardens Europe/Water Country USA and shall be selected by Busch Gardens Europe/Water Country USA; one member of the Committee shall be from the Jamestown-Yorktown Foundation and shall be selected by the Foundation; one member of the Committee shall be selected by the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance; and one member of the Committee shall be the President and Chief Executive Officer of the Virginia Tourism Authority who shall serve ex officio. Each of these six members of the Committee shall have one vote apiece. The President of the Greater Williamsburg Chamber and Tourism Alliance shall serve ex officio with nonvoting privileges unless chosen by the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance to serve as its voting representative. The Executive Director of the Williamsburg Hotel and Motel Association shall serve ex officio with nonvoting privileges unless chosen by the Board of Directors of the Williamsburg Hotel and Motel Association to serve as its voting representative.

In no case shall more than one person of the same local government, including the governing body of the locality, serve as a member of the Committee at the same time.

If at any time a person who has been selected to the Committee by other than a local governing body becomes or is (a) a member of the local governing body of the City of Williamsburg, the County of James City, or the County of York, or (b) an employee of one of such local governments, the person shall be ineligible to serve as a member of the Committee while a member of the local governing body or an employee of one of such local governments. In such case, the body that selected the person to serve as a member of the Commission shall promptly select another person to serve as a member of the Committee.

3. The Williamsburg Area Destination Marketing Committee shall maintain all authorities granted by

182 this section. The Greater Williamsburg Chamber and Tourism Alliance shall serve as the fiscal agent for
183 the Williamsburg Area Destination Marketing Committee with specific responsibilities to be defined in a
184 contract between such two entities. The contract shall include provisions to reimburse the Greater
185 Williamsburg Chamber and Tourism Alliance for annual audits and any other agreed-upon expenditures.
186 The Williamsburg Area Destination Marketing Committee shall also contract with the Greater
187 Williamsburg Chamber and Tourism Alliance to provide administrative support services as the entities
188 shall mutually agree.

189 4. The provisions in subdivision 2 relating to the composition and voting powers of the Williamsburg
190 Area Destination Marketing Committee shall be a condition of the authority to impose the tax provided
191 herein.

192 For purposes of this subsection, "advertising the Historic Triangle area" as an overnight tourism
193 destination means advertising that is intended to attract visitors from a sufficient distance so as to
194 require an overnight stay of at least one night.

195 ~~DB.~~ The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under
196 this section, mutatis mutandis.

197 § 58.1-3825. Additional transient occupancy tax in Rockbridge County and the Cities of Lexington
198 and Buena Vista.

199 In addition to ~~such the~~ transient occupancy taxes as are tax authorized by this chapter § 58.1-3840,
200 Rockbridge County and the Cities of Lexington and Buena Vista may impose ~~an additional~~ a transient
201 occupancy tax not to exceed two percent of the amount of charge for the occupancy of any room or
202 space occupied. The authority to impose such tax is hereby individually granted to the local governing
203 bodies of such county and cities. However, if such tax is adopted, the local governing body of such
204 county or cities adopting the tax shall appropriate the revenues collected therefrom to the Virginia Horse
205 Center Foundation to be used by the Foundation for the sole purpose of making principal and interest
206 payments on a promissory note or notes signed or executed by the Virginia Horse Center Foundation or
207 the Virginia Equine Center Foundation prior to January 1, 2004, with the Rockbridge Industrial
208 Development Authority as the obligee or payee, as part of an agreement for the Authority to issue bonds
209 on behalf of or for improvements at the Virginia Horse Center Foundation, Virginia Equine Center
210 Foundation, or Virginia Equine Center.

211 For purposes of this section, such note or notes signed or executed prior to January 1, 2004, shall
212 include any notes or other indebtedness incurred to refinance such note or notes, regardless of the date
213 of refinancing, provided that such refinancing shall not include any debt or the payment of any debt for
214 any activity relating to the Virginia Horse Center Foundation, Virginia Equine Center Foundation, or
215 Virginia Equine Center that occurs on or after January 1, 2004.

216 The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by
217 the same individual or same group of individuals for 30 or more days. Such tax may no longer be
218 imposed in such county or such cities after final payment of the note or notes described herein.

219 § 58.1-3834. Apportionment of food and beverage or meals tax.

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

226 § 58.1-3840. Certain excise taxes permitted.

227 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any
228 city or town having general taxing powers established by charter pursuant to or consistent with the
229 provisions of § 15.2-1104 ~~or any county~~ may impose excise taxes on cigarettes, admissions, transient
230 room rentals, meals, and travel campgrounds *in conformity with this section. The county tax limitations*
231 *imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.*

232 B. Meals tax. - 1. No such taxes on meals may be imposed on (i) that portion of the amount paid by
233 the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the
234 amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in
235 addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service
236 charge does not exceed 20% percent of the sales price; or (iii) food and beverages sold through vending
237 machines or on any tangible personal property purchased with food coupons issued by the United States
238 Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special
239 Supplemental Food Program for Women, Infants, and Children. No such taxes on meals may be
240 imposed when sold or provided by: (a) restaurants, as such term is defined in subdivision 9 a of
241 § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b)
242 volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational,
243 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; (c) churches that serve meals for their members as a regular part of their religious observances; (d) public or private elementary or secondary schools, or public or private colleges and universities, to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) 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~~ *2. The meals tax shall not be levied on meals: (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.*

~~In addition, as~~ *3. As set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.*

B4. Notwithstanding any other provision of this section, no county, city, or town shall levy any tax under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

5. In any case where a business is located partially within two or more local jurisdictions by reason of the boundary line between the local jurisdictions passing through the place of business, and one or more of the local jurisdictions imposes the meals tax, the tax rate shall be computed by applying the apportionment formula in § 58.1-3709 to the meals tax rate of each applicable local jurisdiction. The apportioned rate shall be rounded to the nearest one-half percent.

6. All meals tax collections shall be deemed to be held in trust for the county, city, or town imposing the respective meals tax.

C. Admissions tax. - 1. In accordance with the provisions of Article X, Section 1 of the Constitution of Virginia, events to which admission is charged shall be divided into the following classes for the purposes of taxation:

a. Admissions charged for attendance at any event, the gross receipts of which go wholly to a charitable purpose or purposes.

b. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.

c. Admissions charged for entry into museums, botanical or similar gardens, and zoos.

d. Admissions charged to participants in order to participate in sporting events.

e. Admissions charged for entry into major league baseball games and events at any major league baseball stadium that has seating for at least 40,000 persons, and any other spectator event.

f. Admissions charged to any off-track horse race wagering facility.

g. All other admissions.

Any county, city, or town may elect to impose an admissions tax on one or more, all, or none of the classes of admissions set forth in this subsection. Any county, city, or town may, by ordinance, elect not to levy an admissions tax on admission to an event, provided that the purpose of the event is solely to raise money for charitable purposes and that the net proceeds derived from the event will be transferred to an entity or entities that are exempt from sales and use tax pursuant to § 58.1-609.11.

2. Any county, city, or town that is authorized to levy a tax on admissions may levy the tax on admissions paid for any event held at facilities that are not owned by the county, city, or town at a lower rate than the rate levied on admissions paid for any event held at its county-, city-, or town-owned civic centers, stadiums and amphitheatres.

3. All admissions tax collections shall be deemed to be held in trust for the county, city, or town imposing the respective admissions tax.

~~D. [Expired.]~~

D. Transient occupancy tax. - 1. No tax imposed on transient room rentals shall apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or

305 more days in hotels; motels; boarding houses; condominiums, apartments, townhouses, or like buildings;
306 travel campgrounds; or other facilities offering guest rooms.

307 2. Any county, city, or town that requires local hotel and motel businesses, or any class thereof, to
308 collect, account for, and remit to that locality a local tax imposed on the consumer may allow the
309 businesses a commission for such service in the form of a deduction from the tax remitted. The
310 commission shall be provided for by ordinance, which shall set the rate at no less than three percent
311 and not to exceed five percent of the amount of tax due and accounted for. No commission shall be
312 allowed if the amount due was delinquent.

313 3. All transient occupancy tax collections shall be deemed to be held in trust for the county, city, or
314 town imposing the respective transient occupancy tax.

315 E. Cigarette tax. - All cigarette tax collections shall be deemed to be held in trust for the county,
316 city, or town imposing the respective cigarette tax. Any county, city, or town having a tax upon the sale
317 or use of cigarettes may by ordinance provide for the administration and enforcement of any such
318 cigarette tax. The local ordinance may:

319 1. Provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling,
320 storing, or possessing cigarettes within or transporting cigarettes within or into such taxing jurisdiction
321 for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company
322 authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the
323 average monthly liability of such taxpayer. The county, city, or town may revoke registration if the
324 required bond is impaired, but for no other reason. Any distributor, wholesaler, retailer, or other person
325 whose business and residence is outside the taxing jurisdiction, who shall sell, store, or possess in the
326 taxing jurisdiction therein any cigarettes shall by virtue of such sale, storage, or possession submit
327 himself to its legal jurisdiction and appoint as his attorney for any service of lawful process the officer
328 or person as may be designated in the local ordinance for that purpose. A copy of any process served
329 on the designated officer or person shall be sent forthwith by registered mail to the distributor,
330 wholesaler, or retailer.

331 2. Provide for the use of a tax stamp or meter impression as evidence of payment of the tax or other
332 method or system of reporting payment and collection of such tax.

333 3. Provide that tobacco products found in quantities of more than six cartons within the taxing
334 jurisdiction shall be conclusively presumed for sale or use within the jurisdiction and the tobacco
335 products may be seized and confiscated if:

336 a. They are in transit and are not accompanied by a bill of lading or other document indicating the
337 true name and address of the consignor or seller and of the consignee or purchaser and the brands and
338 quantity of cigarettes so transported, or they are in transit and accompanied by a bill of lading or other
339 document that is false or fraudulent, in whole or in part; or

340 b. They are in transit and are accompanied by a bill of lading or other document indicating:

341 (1) A consignee or purchaser in another state or the District of Columbia who is not authorized by
342 the law of the other jurisdiction to receive or possess the tobacco products on which the taxes imposed
343 by the other jurisdiction have not been paid, unless the tax of the state or District of destination has
344 been paid and the tobacco products bear the tax stamps of that state or District; or

345 (2) A consignee or purchaser in the Commonwealth but outside the taxing jurisdiction who does not
346 possess a Virginia sales and use tax certificate or a Virginia retail cigarette license and, where
347 applicable, both a business license and retail cigarette license issued by the local jurisdiction of
348 destination; or

349 c. They are not in transit and the tax has not been paid, nor have approved arrangements for
350 payment been made, provided that this subdivision shall not apply to cigarettes in the possession of
351 distributors or public warehouses that have filed notice and appropriate proof with the taxing
352 jurisdiction that those cigarettes are temporarily within the taxing jurisdiction and will be sent to
353 consignees or purchasers outside the jurisdiction in the normal course of business.

354 4. Provide that cigarettes and other property, other than motor vehicles, used in the furtherance of
355 any illegal evasion of the tax that are seized and confiscated may be disposed of by sale or other
356 method deemed appropriate by the local taxing authority. No credit from any sale or other disposition
357 shall be allowed toward any tax or penalties owed.

358 5. Provide that persons violating any provision thereof shall be deemed guilty of a Class 1
359 misdemeanor and require the payment of penalties for late payment not to exceed 10 percent per month,
360 penalties for fraud or evasion of the tax not to exceed 50 percent, and interest not to exceed three
361 quarters of one percent per month, upon any tax found to be overdue and unpaid. The mere possession
362 of untaxed cigarettes in quantities of not more than six cartons shall not be a violation of any such
363 ordinance.

364 6. Provide for the forfeiture and sale of any property seized, provided, however, that proper notice of
365 the seizure shall be given to the known holders of property interests in such property and the notice
366 shall include procedures for administrative appeal as well as affirmative defenses, which may be

asserted by such holders which procedures must be set forth in reasonable detail.

7. Provide that any coin-operated vending machine in which any cigarettes are found, stored, or possessed and bearing a counterfeit or bogus cigarette tax stamp or impression, or any unstamped tobacco products, or any cigarettes upon which the tax has not been paid, may be declared contraband property and shall be subject to confiscation and sale as provided in subdivision 6. When any vending machine is found containing such cigarettes it shall be presumed that such cigarettes were intended for distribution, sale, or use therefrom. In lieu of immediate seizure and confiscation of any vending machines used in an illegal evasion of the tax, the vending machine may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes, and the vending machine may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. A seal may be removed and the machine declared eligible for operation only by authorized enforcement authorities. Nothing in this subsection shall prevent seizure and confiscation of a vending machine at any time after it is sealed.

8. Provide that any counterfeit stamps or counterfeit impression devices may also be seized and confiscated.

9. Provide for the delegation of its administrative and enforcement authority under its cigarette tax ordinance to one agency or authority pursuant to the provisions of § 15.2-1300. The agency or authority may promulgate rules and regulations governing (i) the display of cigarette stamps in vending machines, (ii) tax liens against property of taxpayers hereunder, (iii) extending varying discount rates and establish different classes of taxpayers for those required to collect and remit the tax, (iv) requirements concerning keeping and production of records, (v) administrative and jeopardy assessment of tax where reasonably justified, (vi) required notice to authorities of sale of taxpayer's business, (vii) audit requirements and authority, (viii) criteria for authority of distributors and others to possess untaxed cigarettes, and (ix) any other provisions consistent with the powers granted by this section or necessarily implied therefrom. The ordinance may further provide that the agency or authority created may issue a common revenue stamp, employ legal counsel and bring appropriate court action in its own name where necessary to enforce payment of the cigarette taxes or penalties owed any member jurisdiction, and provide cigarette tax agents and the necessary enforcement supplies and equipment needed to effectively enforce the cigarette tax ordinance promulgated by each county, city, or town. Any cigarette tax agent shall meet the requirements of training or experience as may be promulgated from time to time by the enforcement authority. When performing their duties, cigarette tax agents shall be required to carry proper identification and may be armed for their own protection and for the enforcement of the ordinance. Any cigarette tax agent shall have the power of arrest upon reasonable and probable cause that a violation of any tobacco tax ordinance has been committed.

10. Authorize, if the county, city, or town imposing a cigarette tax permits the use of meter impressions or stamps to evidence its payment, an officer of the county, city, or town or joint enforcement authority to enter into an arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the county, city, or town tax, and the state tax. The Department is hereby authorized to enter into such an arrangement. The procedure under such an arrangement shall be such as may be agreed upon by and between the authorized county, city, town, or joint enforcement authority officer and the Department.

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

A. Rappahannock County and Madison County, by duly adopted ordinance, are hereby authorized to levy a tax on occupancy in a bed and breakfast establishment ~~on which the county is authorized to levy a transient occupancy tax under § 58.1-3819~~ and on food and beverages sold for human consumption within such establishment ~~on which the county is authorized to levy a food and beverage tax under § 58.1-3833~~, when the charges for the occupancy of the room or space and for the sale of food and beverages are assessed in the aggregate and not separately stated. ~~Such tax shall not exceed four percent of the total amount charged for the occupancy of the room or space occupied and for the food and beverages.~~ Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. 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.). Collection of such tax shall be in a manner prescribed by the governing body. All taxes collected under the authority of this article shall be deemed to be held in trust for the county imposing the tax.

B. If a bed and breakfast establishment separately states charges for the occupancy of the room or space and for the sale of food and beverages, a transient occupancy tax ~~levied under § 58.1-3819~~ and a food and beverage tax ~~levied under § 58.1-3833 pursuant to § 58.1-3840~~ shall apply to such separately stated charges, as applicable.

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

428 provides that a county tax authorized by this article shall apply within the limits of such town; then such
429 tax may be imposed within such towns.

430 D. This tax shall be levied only if a food and beverage tax has been approved in a referendum
431 within the county as provided by subsection A of § ~~58.1-3833~~. No county in which the levy of a food
432 and beverage tax has been approved in a referendum pursuant to subsection A of § ~~58.1-3833~~ shall be
433 required to submit an amendment to its meals tax ordinance or a further question to the voters in a
434 referendum prior to adopting an ordinance adopting or amending the tax authorized by this article.

435 E. Nothing herein contained shall affect any authority heretofore granted to any county to levy a
436 food and beverage tax or a transient occupancy tax.

437 2. That §§ 58.1-3817, 58.1-3818, 58.1-3818.01, 58.1-3819 through 58.1-3822, 58.1-3824, 58.1-3825.1,
438 58.1-3825.2, 58.1-3830, 58.1-3831, 58.1-3832, and 58.1-3833, of the Code of Virginia are repealed.

439 3. That the provisions of this act shall become effective on January 1, 2013.