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HOUSE BILL NO. 1233

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Kilgore
on February 8, 2012)

(Patron Prior to Substitute—Delegate Kilgore)

A *BILL to amend and reenact § 58.1-3713.3 of the Code of Virginia, relating to local ordinances levying taxes on the severing of oil, coal, or gas from the earth and appeals of the same.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3713.3 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3713.3. Validation of local coal and gas severance tax ordinances and local coal and gas road improvement tax ordinances.

A. All ordinances adopted pursuant to §§ 58.1-3712 and 58.1-3713 prior to October 1, 1989, shall be valid as if they had been enacted as of January 1, 1985, as long as similar ordinances had been validly enacted under the predecessor provisions to §§ 58.1-3712 and 58.1-3713 and in substantial compliance therewith. Any such local tax ordinances are declared to be validly adopted and enacted as of January 1, 1985, notwithstanding the failure of the locality to change the reference in the local tax ordinance after the enactment of this title, effective January 1, 1985.

B. All ordinances adopted pursuant to §§ 58.1-3712, 58.1-3713 and 58.1-3713.4 prior to January 1, 2001, shall be valid and presumed to include all the provisions of §§ 58.1-3712, 58.1-3713 and 58.1-3713.4 as long as such ordinances were in substantial compliance therewith at the time of their adoption.

C. 1. Any locality that imposed the tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for the 2008, 2009, 2010, or 2011 license year shall (if it has not already done so by the effective date of this subsection) amend its local ordinance with regard to such taxes to adopt or include the uniform ordinance provisions of § 58.1-3703.1, with the exception of subdivisions A 1 and A 3 of such section, in the local ordinance with an effective date retroactive to the 2008 license year. As of the effective date of this subsection, each such locality shall allow all persons assessed with such taxes for the 2008 license year or any license year thereafter to exercise all rights and remedies under § 58.1-3703.1, provided that subdivisions A 1 and A 3 of such section shall be inapplicable for purposes of the imposition, collection, or appeal of such taxes. Such rights and remedies shall include, but shall not be limited to, the appeal procedures set forth under subdivisions A 5, A 6, and A 7 of § 58.1-3703.1. In addition, each such locality, upon the provisions of this subsection becoming effective, shall within 60 days thereof provide written notice to all persons upon whom the locality imposed one or more of the taxes under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, or 2011 informing the person that the locality has adopted or will adopt the uniform ordinance provisions of § 58.1-3703.1 with regard to such taxes, excluding subdivisions A 1 and A 3 of such section, retroactive to the 2008 license year and for each license year thereafter.

2. Any locality described in subdivision 1 that amends its local ordinance with regard to such taxes, or has amended the same prior to the effective date of this subsection, to expressly include, incorporate by reference, or adopt by incorporation the uniform ordinance provisions of § 58.1-3703.1 shall have met the requirement under subdivision 1 to amend its local ordinance with regard to such taxes, provided that the locality on or after the effective date of this subsection further amends its local ordinance to make such inclusion, incorporation by reference, or adoption by incorporation retroactive to the 2008 license year. Nothing in this subdivision shall relieve the locality from (i) the notice requirements under subdivision 1 or (ii) the requirement under subdivision 1 to allow all persons assessed with such taxes for the 2008 license year or any license year thereafter to exercise all rights and remedies under § 58.1-3703.1 except that subdivisions A 1 and A 3 of such section shall be inapplicable for purposes of the imposition, collection, or appeal of such taxes.

3. Each locality amending its ordinance pursuant to subdivision 1 or 2 shall amend its ordinance in accordance with the respective subdivision within 90 days of the effective date of this subsection.

4. Each local ordinance amended as provided under this subsection shall be deemed valid and properly enacted for purposes of any tax imposed pursuant to § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, or 2012. Further, each such ordinance shall be deemed to have met the requirement of subsection A of § 58.1-3703.1 to include in the local ordinance provisions substantially similar to those set forth under such subsection.

5. a. Notwithstanding any other provision of law, any person assessed with a license tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, 2012, or 2013 shall be allowed to file an administrative appeal of the same under § 58.1-3703.1 to the commissioner of the revenue or other local assessing official only during the period beginning July 1,

60 2013, and ending July 1, 2014. Such person shall be allowed to file the administrative appeal regardless
61 of whether an appealable event, as defined in § 58.1-3703.1, occurs on or after the effective date of this
62 subsection. Such appeal to the commissioner of the revenue or other local assessing official may be
63 further appealed to the Tax Commissioner pursuant to subdivision A 6 of § 58.1-3703.1 and to the
64 appropriate circuit court pursuant to subdivision A 7 of § 58.1-3703.1, in accordance with the
65 procedures and time frames for the appeal as provided under the respective subdivision.

66 b. Notwithstanding any other provision of law, any person assessed with a license tax under
67 § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, 2012, or
68 2013 who elects not to file an appeal of the same pursuant to § 58.1-3703.1 may apply for relief of the
69 same pursuant to § 58.1-3980 or 58.1-3984 only during the period beginning July 1, 2013, and ending
70 July 1, 2014. If such person elects not to file an appeal of such license tax pursuant to § 58.1-3703.1
71 but applies for relief of the same pursuant to § 58.1-3980 or 58.1-3984, then the period for collecting
72 any such license tax shall expire as provided in § 58.1-3940, two years after a final determination
73 pursuant to § 58.1-3981, or two years after the final decision in a court application pursuant to
74 § 58.1-3984, whichever is later.

75 c. Notwithstanding the provisions of § 58.1-3940, the period for collecting any license tax imposed
76 under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license years 2008 and 2009 shall expire
77 on January 1, 2016, unless a longer period is provided under law.

78 d. Notwithstanding any other provision of law, collection activity shall be suspended on the
79 assessment of additional license tax for license year 2008, 2009, 2010, or 2011 for taxes on severing
80 coal, gases, or oil from the earth pursuant to § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4. In
81 addition, collection activity shall be suspended on the assessment of additional license tax for license
82 year 2012 or 2013 for such taxes on severing coal, gases, or oil from the earth, provided that, in filing
83 severance tax returns for the severance of coal, gases, or oil from the earth in the locality in license
84 year 2012 and 2013, the person filing the return includes with the return a good faith payment of the
85 tax due or a good faith report of the tax due. The good faith payment or report of tax due shall be in
86 accordance with the methodology used by that person as of January 1, 2010, to report the person's
87 gross receipts to the locality for purposes of such taxes unless such person and the locality have entered
88 into a contract or agreement on an alternate methodology to report the person's gross receipts. As used
89 in this subsection, "additional license tax" means all amounts of license tax, penalty, and interest that
90 are in addition to the amount of license tax paid by a person or reported by a person as due in filing
91 severance tax returns for the severance of coal, gases, or oil from the earth in the locality. Collection
92 activity shall not be required to be suspended if collection of any tax, interest, or penalty is jeopardized
93 by delay as defined in § 58.1-3703.1. However, nothing herein shall be construed or interpreted as to
94 require the suspension of collection activity for any amount of unpaid license tax (and any interest and
95 penalty related thereto) reported by a person as due in filing a severance tax return for the severance of
96 coal, gas, or oil from the earth.

97 Collection activity on additional license tax for license year 2008, 2009, 2010, or 2011 may
98 commence on July 1, 2013, unless other law requires the suspension of collection activity. Collection
99 activity on additional license tax for license year 2012 or 2013, if suspended pursuant to this
100 subdivision, may commence on or after July 1, 2013, unless other law requires the suspension of
101 collection activity.

102 6. Except as otherwise provided in subdivision 5, nothing in this subsection shall be construed or
103 interpreted as extending or decreasing any limitations period for appealing any of the taxes imposed
104 under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 or extending any period for the collection of
105 such taxes.

106 2. That no provision of this act shall be construed or interpreted to change or affect, invalidate,
107 or interfere with any agreement entered into between a person assessed with any license tax under
108 § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 of the Code of Virginia and the commissioner of
109 the revenue or other local assessing official of the locality, with regard to such license taxes.

110 3. That the Tax Commissioner shall convene a working group consisting of representatives of
111 those localities that levy a severance tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4
112 of the Code of Virginia and representatives of those coal, oil, and gas companies that are subject
113 to the tax. The working group may add other individuals to its membership as it deems necessary.

114 The working group shall review the methodology for determining gross receipts subject to such
115 tax and such other issues related to the imposition of any tax under § 58.1-3712, 58.1-3712.1,
116 58.1-3713, or 58.1-3713.4 of the Code of Virginia. Upon completion of the review of the
117 methodology, the Tax Commissioner shall have the discretion to review with the working group
118 such other tax issues as may be in dispute between such localities and such representatives. The
119 working group is requested to begin its work as soon as possible after the conclusion of the 2012
120 Regular Session of the General Assembly and to identify any changes to current law, regulation,
121 or policy that it considers desirable when addressing the above issues. The working group is

122 requested to provide a report and recommendations to the Chairmen of the House Committee on
123 Finance and the Senate Committee on Finance by December 1, 2012.
124 4. That an emergency exists and this act is in force from its passage.