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HOUSE BILL NO. 10

Offered January 11, 2012

Prefiled December 1, 2011

A BILL to amend and reenact § 58.1-3706 of the Code of Virginia, relating to the rates of the local license fee and the local license tax imposed by localities.

Patrons—Cole, Watson and Webert

Referred to Committee on Finance

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

§ 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 enterprise listed:

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

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

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

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

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

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

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

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

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

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

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

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

73 3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county
74 manager plan of government, the following shall govern the taxation of the licensees described in
75 subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors
76 receiving identifiable federal appropriations for research and development services as defined in
77 § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic
78 systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v)
79 electronic and physical sciences may be separately classified by any such county and subject to tax at a
80 license tax rate not to exceed the limits set forth in subsections A through C above as to such federal
81 funds received in payment of such contracts upon documentation provided by such persons, firms, or
82 corporations to the local commissioner of revenue or finance officer confirming the applicability of this
83 subsection.

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

94 The provisions of this subsection shall not apply to any person or entity (i) not conducting business
95 as a gas retailer in the county, city, or town for the entire license year immediately preceding the license
96 year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to
97 § 58.1-3703 for the license year immediately preceding the license year of such increase.

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

100 F. *Notwithstanding any other provision of law, a locality shall not impose a fee or tax pursuant to*
101 *this chapter in excess of the rate of such fee or tax imposed by the locality for the 2011 license year.*
102 *The provisions of this subsection shall not be construed or interpreted as prohibiting a locality from*
103 *imposing a local license tax on the Virginia taxable income of a business pursuant to § 58.1-3702,*
104 *provided that the rate of the tax shall not exceed the rate imposed by the locality for the 2011 license*
105 *year. Any locality that elects to impose a local license tax on Virginia taxable income may not*
106 *thereafter impose such tax on gross receipts.*