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HOUSE BILL NO. 1831

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend and reenact §§ 58.1-3700.1 and 58.1-3703 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 12.1-21.3 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11, relating to tax and fee incentives for certain beginning businesses.*

Patron—Lingamfelter

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3700.1 and 58.1-3703 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 12.1-21.3 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11 as follows:

§ 12.1-21.3. Businesses of certain disabled veterans exempt from fees.

A. As used in this section:

"Engaged in business" means undertaking a course of dealing that requires the time, attention, and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules, and documents that are required only of persons engaged in a trade or business.

"Service disabled veteran business" means the same as that term is defined under § 2.2-2001.

B. The Commission shall not impose any fee pursuant to § 13.1-615.1, 13.1-616, 13.1-775.1, 13.1-815.1, 13.1-816, 13.1-936.1, 13.1-1005, 13.1-1061, 13.1-1204, 13.1-1251, 50-73.17, or 50-73.66 upon any service disabled veteran business for the first two years that such enterprise is engaged in business in the Commonwealth. The exemption from such fees shall only apply to service disabled veteran businesses that were first engaged in business in the Commonwealth on or after July 1, 2013.

C. A merger, acquisition, similar business combination, name change, or change in business form shall in no way affect the date on which a service disabled veteran business first engaged in business in the Commonwealth.

§ 58.1-439.12:11. Tax credit for personal property taxes of beginning businesses.

A. As used in this section:

"Beginning business" means a business that first engaged in business in the Commonwealth on or after January 1, 2013.

"Engaged in business" means undertaking a course of dealing that requires the time, attention, and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules, and documents that are required only of persons engaged in a trade or business.

"Tax year" means the 12-month period beginning in the calendar year for which business tangible personal property tax, machinery and tools tax, or merchants' capital tax was imposed by a locality on a beginning business for the full 12-month period.

B. For taxable years beginning on or after January 1, 2013, but before January 1, 2018, a beginning business shall be allowed a credit against the taxes imposed by Article 2 (§ 58.1-320 et seq.) or 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to the sum of business tangible personal property tax, machinery and tools tax, or merchants' capital tax pursuant to Chapter 35 (§ 58.1-3500 et seq.) paid by the beginning business during the taxable year.

Credit shall be allowed under this section only for business tangible personal property tax, machinery and tools tax, and merchants' capital tax imposed up through the first two full tax years of the beginning business.

In no case shall credit be allowed under this section for any interest or penalty.

C. A merger, acquisition, similar business combination, name change, or change in business form shall in no way affect the date on which a business first engaged in business in the Commonwealth.

D. In order to claim the credit established under this section, the beginning business shall attach

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59 *evidence of the payment of such taxes to the beginning business's tax return filed with the Department*
60 *or the State Corporation Commission, as applicable.*

61 *E. The amount of the credit claimed shall not exceed the total amount of tax imposed upon the*
62 *beginning business for the taxable year under Article 2 (§ 58.1-320 et seq.) or 10 (§ 58.1-400 et seq.),*
63 *Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of*
64 *Chapter 26, as applicable. Any credit not usable for the taxable year for which the credit was first*
65 *allowed to be claimed may be carried over for credit against the tax imposed upon the beginning*
66 *business under Article 2 (§ 58.1-320 et seq.) or 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et*
67 *seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable,*
68 *in the next five succeeding taxable years or until the total amount of the tax credit has been taken,*
69 *whichever is sooner.*

70 *F. Credits granted to a partnership, limited liability company, or electing small business corporation*
71 *(S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in*
72 *proportion to their ownership or interest in such business entities.*

73 *G. The Tax Commissioner shall develop guidelines implementing the provisions of this section. Such*
74 *guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).*

75 **§ 58.1-3700.1. Definitions.**

76 For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless
77 otherwise required by the context:

78 "Affiliated group" means:

79 1. One or more chains of corporations subject to inclusion connected through stock ownership with a
80 common parent corporation which is a corporation subject to inclusion if:

81 a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least
82 eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion,
83 except the common parent corporation, is owned directly by one or more of the other corporations
84 subject to inclusion; and

85 b. The common parent corporation directly owns stock possessing at least eighty percent of the
86 voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at
87 least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock"
88 does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation
89 subject to inclusion" means any corporation within the affiliated group irrespective of the state or
90 country of its incorporation; and the term "receipts" includes gross receipts and gross income.

91 2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock
92 possessing:

93 a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote
94 or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

95 b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote
96 or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking
97 into account the stock ownership of each such person only to the extent such stock ownership is
98 identical with respect to each such corporation.

99 When one or more of the corporations subject to inclusion, including the common parent corporation,
100 is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock
101 corporation membership or membership voting rights, as is appropriate to the context.

102 3. Two or more entities if such entities satisfy the requirements in subdivision 1 or 2 of this
103 definition as if they were corporations and the ownership interests therein were stock.

104 "Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is
105 applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment
106 shall include a written assessment made pursuant to notice by the assessing official or a self-assessment
107 made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be
108 deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer
109 by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last
110 known address. Self-assessments shall be deemed made when a return is filed, or if no return is
111 required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for
112 the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing
113 of a return or the payment of tax, as the case may be.

114 "Base year" means the calendar year preceding the license year, except for contractors subject to the
115 provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the
116 gross receipts of a business, such as for beginning businesses or to allow an option to use the same
117 fiscal year as for federal income tax purposes.

118 "Business" means a course of dealing which requires the time, attention and labor of the person so
119 engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of
120 dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one

business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

"Definite place of business" means an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

"Entity" means a business organization, other than a sole proprietorship, that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the Commonwealth or another state.

"Financial services" means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, or other investments.

"Fuel sale" or "fuel sales" shall mean retail sales of alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in § 58.1-2201.

"Gas retailer" means a person or entity engaged in business as a retailer offering to sell at retail on a daily basis alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in § 58.1-2201.

"Gross receipts" means the whole, entire, total receipts, without deduction.

"Independent registered representative" means an independent contractor registered with the United States Securities and Exchange Commission.

"License year" means the calendar year for which a license is issued for the privilege of engaging in business.

"Professional services" means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

"Purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

"Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property.

"Security broker" means a "broker" as such term is defined under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is registered with the United States Securities and Exchange Commission.

"Security dealer" means a "dealer" as such term is defined under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), or any successor law to the Securities Exchange Act of 1934, who is registered with the United States Securities and Exchange Commission.

§ 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;

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. *Up through the first two full calendar years of any business that locates for the first time in the county, city, or town on or after July 1, 2013. For purposes of this subdivision, a merger, acquisition, similar business combination, name change, or change in business form shall in no way affect the date on which a business first located in the county, city, or town.*

D. Any county, city or town may establish by ordinance a business license incentive program for "qualifying businesses." For purposes of this subsection, a "qualifying business" is a business that locates for the first time in the locality adopting such ordinance. A business shall not be deemed to locate in such locality for the first time based on merger, acquisition, similar business combination, name change, or a change in business form. Any incentive established pursuant to this subsection may extend for a period not to exceed two years from the date the business locates in such locality. The business license incentive program may include (i) an exemption, in whole or in part, of license taxes for any qualifying business; (ii) a refund or rebate, in whole or in part, of license taxes paid by a qualifying business; or (iii) other relief from license taxes for a qualifying business not prohibited by state or federal law.

E. For taxable years beginning on or after January 1, 2012, any locality may exempt, by ordinance, license fees or license taxes on any business that does not have an after-tax profit for the taxable year and offers the income tax return of the business as proof 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.