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HOUSE BILL NO. 483

Offered January 8, 2014

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A BILL to amend and reenact §§ 58.1-609.10, 58.1-3833, and 58.1-3840 of the Code of Virginia, relating to sales and use tax and meals tax; exemption for certain sales on a military base.

 Patron—Villanueva

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.10, 58.1-3833, and 58.1-3840 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-609.10. Miscellaneous exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of (i) food, prepared food and meals and (ii) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on fewer than 24 occasions in a calendar year.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.

7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised, edited, reformatted or copied documents, including but not limited to documents stored on or transmitted by electronic media, to its client or to third parties in the course of the professional's rendition of services to its clientele.

8. School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his

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59 professional practice, regardless of whether such practice is organized as a sole proprietorship,
60 partnership, or professional corporation, or any other type of corporation in which the shareholders and
61 operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician
62 assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for
63 use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise
64 exempt under this section; and samples of prescription drugs and medicines and their packaging
65 distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and
66 Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and
67 drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of §
68 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed to
69 be the user or consumer of all such medicines and drugs.

70 10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances,
71 catheters, urinary accessories, other durable medical equipment and devices, and related parts and
72 supplies specifically designed for those products; and insulin and insulin syringes, and equipment,
73 devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when
74 such items or parts are purchased by or on behalf of an individual for use by such individual. Durable
75 medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily
76 used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or
77 injury, and (iv) is appropriate for use in the home.

78 11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

79 12. Special equipment installed on a motor vehicle when purchased by a handicapped person to
80 enable such person to operate the motor vehicle.

81 13. Special typewriters and computers and related parts and supplies specifically designed for those
82 products used by handicapped persons to communicate when such equipment is prescribed by a licensed
83 physician.

84 14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation,
85 treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and
86 proprietary medicines distributed free of charge by the manufacturer, including packaging materials and
87 constituent elements and ingredients.

88 b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to
89 regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision
90 shall not apply to cosmetics.

91 15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt
92 from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political
93 subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

94 16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under
95 § 501(c)(3) of the Internal Revenue Code, or whose real property is exempt from local taxation
96 pursuant to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or
97 church membership while meeting together in a single location and (ii) in the libraries, offices, meeting
98 or counseling rooms or other rooms in the public church buildings used in carrying out the work of the
99 church and its related ministries, including kindergarten, elementary and secondary schools. The
100 exemption for such churches shall also include baptistries; bulletins, programs, newspapers and
101 newsletters that do not contain paid advertising and are used in carrying out the work of the church;
102 gifts including food for distribution outside the public church building; food, disposable serving items,
103 cleaning supplies and teaching materials used in the operation of camps or conference centers by the
104 church or an organization composed of churches that are exempt under this subdivision and which are
105 used in carrying out the work of the church or churches; and property used in caring for or maintaining
106 property owned by the church including, but not limited to, mowing equipment; and building materials
107 installed by the church, and for which the church does not contract with a person or entity to have
108 installed, in the public church buildings used in carrying out the work of the church and its related
109 ministries, including, but not limited to worship services; administrative rooms; and kindergarten,
110 elementary, and secondary schools.

111 17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings,
112 incontinence products and wound-care products, when purchased by a Medicaid recipient through a
113 Department of Medical Assistance Services provider agreement.

114 18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an
115 individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide
116 variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and
117 olive pits.

118 19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies
119 the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from
120 taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an

organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

20. Sales to military personnel by a private dealer at any retail establishment of the dealer located on a United States military base on which the taxes under § 58.1-5833 or 58.1-3840 could be imposed except for the exemption for such sales in subsection A of § 58.1-3833 and subsection A of § 58.1-3840.

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by: (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, 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; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools, colleges, and universities to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (x) 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 tax shall not be levied on food and beverages: (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; *or (d) provided by private establishments located on a United States military base to military personnel.*

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. 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.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.

182 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
183 law shall constitute embezzlement pursuant to § 18.2-111.

184 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
185 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

186 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
187 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition
188 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or
189 service charge added by the restaurant in addition to the sales price, but only to the extent that such
190 mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages
191 sold in factory sealed containers and purchased for off-premises consumption or food purchased for
192 human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended,
193 and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad
194 bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment
195 of vegetables, and nonfactory sealed beverages.

196 **§ 58.1-3840. Certain excise taxes permitted.**

197 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any
198 city or town having general taxing powers established by charter pursuant to or consistent with the
199 provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals,
200 meals, and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the
201 amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii)
202 that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the
203 restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity
204 or service charge does not exceed 20% of the sales price; or (iii) food and beverages sold through
205 vending machines or on any tangible personal property purchased with food coupons issued by the
206 United States Department of Agriculture under the Food Stamp Program or drafts issued through the
207 Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals
208 may be imposed when sold or provided by: (a) restaurants, as such term is defined in subdivision 9 a of
209 § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b)
210 volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational,
211 charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three times per
212 calendar year as a fundraising activity, the gross proceeds of which are to be used by such church,
213 religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious
214 purposes; (c) churches that serve meals for their members as a regular part of their religious
215 observances; (d) public or private elementary or secondary schools, or public or private colleges and
216 universities, to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing
217 homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes
218 for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted
219 apartment complexes or residences with restaurants, not open to the public, where meals are served and
220 fees are charged for such food and beverages and are included in rental fees.

221 Also, the tax shall not be levied on meals: (a) when used or consumed and paid for by the
222 Commonwealth, any political subdivision of the Commonwealth, or the United States; ~~or~~ (b) provided
223 by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind,
224 handicapped, or needy persons in their homes, or at central locations; ~~or~~ (c) provided by private
225 establishments that contract with the appropriate agency of the Commonwealth to offer food, food
226 products, or beverages for immediate consumption at concession prices to elderly, infirm, blind,
227 handicapped, or needy persons in their homes or at central locations; *or (d) provided by private*
228 *establishments located on a United States military base to military personnel.*

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

233 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this
234 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
235 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
236 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
237 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
238 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

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

243 D. [Expired.]