

DEPARTMENT OF TAXATION

2014 Fiscal Impact Statement

1. **Patron** Peter F. Farrell

2. **Bill Number** HB 1099

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** Passed House and Senate

4. **Title** Local Food and Beverages and Meals Tax;
Exempts Nonprofit Fundraiser Meal Sales

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would exempt from county food and beverage and city meals taxes, the first \$100,000 in gross receipts per calendar year of meals sold by nonprofit entities at fundraising sales, beginning with the fourth such sale in a calendar year, and excluding gross receipts from the first three sales. The bill would require that the gross proceeds from such sales be used by the organization exclusively for nonprofit, educational, charitable, benevolent, or religious purposes in order for the exemption to apply.

Under current law, volunteer fire departments and rescue squads, nonprofit religious bodies, and educational, charitable, fraternal or benevolent organizations may make sales of meals as a fundraising activity exempt of the local food and beverages and meals taxes, provided such sales occur on an occasional basis, not exceeding three times per calendar year, and provided the proceeds of such sales are used by the organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

To the extent that nonprofit entities elect to have more than three fundraising sales of meals per year, and such additional sales generate gross proceeds that fall under \$100,000 annually, this bill would result in a revenue decrease in those localities currently imposing a food and beverages or meals tax. From the first quarter of 2012 to the third quarter of 2013, 39 cities, 45 counties, and 36 towns imposed a local tax on meals, and collected a combined total of \$462 million in local food and beverages and meals taxes. The magnitude of the revenue loss for this bill is unknown, but will vary in each locality, based on the rate imposed and the gross proceeds of nonprofit entities that elect to have more than three fundraising meal sales per year. This bill would have no impact on state revenues.

9. Specific agency or political subdivisions affected:

Localities imposing food and beverage or meals taxes

10. Technical amendment necessary: No.

11. Other comments:

Local Food and Beverage Tax

County Food and Beverages Tax

Every county is authorized to levy a tax on food and beverages sold for human consumption, by a restaurant at a maximum rate of four percent of the amount charged for such food and beverages. The tax must not be levied on food and beverages sold: i) through vending machines; or by: ii) boardinghouses that do not accommodate transients; iii) cafeterias operated by industrial plants for employees; iv) volunteer fire departments and rescue squads, and nonprofit churches and organizations on an occasional basis, not exceeding three times per calendar year, as a fundraising activity; v) churches to their members; vi) nonprofit cafeterias in public schools; vii) hospitals, nursing homes, medical clinics, convalescent homes; viii) day care centers; ix) home for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; and x) age restricted apartment complexes. The tax also may not be levied on i) discretionary gratuities; ii) mandatory gratuities and service charges that do not exceed 20% of the sales price; and iii) alcoholic beverages sold in factory sealed containers. The tax does apply to prepared foods ready for human consumption sold at grocery stores and convenience stores.

As of 2012, 45 counties imposed the food and beverages tax. With the exception of Dickenson County, every county imposed the tax at the maximum rate.

City Meals Tax

Currently, any city or town having general taxing powers as established by charter may impose a local meals tax through the adoption of an ordinance by the local governing body. The tax does not apply to: 1) discretionary gratuities paid in addition to the sales price of the meal; 2) mandatory gratuities, to the extent they do not exceed 20% of the sales price; 3) food and beverages sold through vending machines; or 4) food and beverages purchased with food coupons or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. Similarly, the tax does not apply when food is sold or provided by: 1) restaurants as employee meals, considered compensation; 2) volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis as a fundraising activity; 3) churches regularly serving meals for their members; 4) public or private elementary, secondary schools, colleges, and universities, to their students or employees; 5) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents; 6) day care centers; 7) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics;

or 8) 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.

As of 2012, all Virginia cities and 115 towns impose a meals tax, with the median rate being 6% and 5% respectively.

Retail Sales and Use Tax

Any nonprofit organization that is eligible to be granted a Retail Sales and Use Tax exemption on its purchases of tangible personal property and that is otherwise eligible for the sales tax occasional sale exemption may make exempt sales of 1) food and 2) tickets to events that include the provision of food, provided that such sales take place on 23 or fewer occasions in a calendar year. This exemption is restricted to nonprofit entities that are exempt from federal income taxation under *Internal Revenue Code* § 501(c)(3) or § 501(c)(4).

Proposal

This bill would exempt from county food and beverage and city meals taxes, the first \$100,000 in gross receipts per calendar year of meals sold by nonprofit entities at fundraising sales, beginning with the fourth such sale in a calendar year. The bill would require that the gross proceeds from such sales be used by the organization exclusively for nonprofit, educational, charitable, benevolent, or religious purposes in order for the exemption to apply.

For purposes of determining whether the \$100,000 gross receipts threshold is exceeded, gross receipts would exclude receipts from the first three fundraising sales per calendar year.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 3/20/2014 KP
DLAS File Name: HB1099FER161