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HOUSE BILL NO. 165

Offered January 13, 2016

Prefiled December 23, 2015

A BILL to amend and reenact §§ 58.1-3833 and 58.1-3840 of the Code of Virginia, relating to local meals and food and beverage taxes.

Patron—Farrell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 58.1-3833 and 58.1-3840 of the Code of Virginia are amended and reenacted as follows:
§ 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 volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), 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, *or, if the organization is exempt from taxation under § 501(c)(19) of the Internal Revenue Code, fraternal* 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.

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

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59 County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a
60 tax on food and beverages sold for human consumption by a restaurant, as such term is defined in
61 § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four
62 percent of the amount charged for such food and beverages, provided that the governing body of the
63 respective county holds a public hearing before adopting a local food and beverage tax, and the
64 governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an
65 amount and on such terms as the governing body may by ordinance prescribe.

66 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
67 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
68 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
69 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.
70 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
71 law shall constitute embezzlement pursuant to § 18.2-111.

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

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

84 **§ 58.1-3840. Certain excise taxes permitted.**

85 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town
86 having general taxing powers established by charter pursuant to or consistent with the provisions of §
87 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel
88 campgrounds. No such taxes on meals may be imposed on (i) that portion of the amount paid by the
89 purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the
90 amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in
91 addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service
92 charge does not exceed 20% of the sales price; or (iii) food and beverages sold through vending
93 machines or on any tangible personal property purchased with food coupons issued by the United States
94 Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special
95 Supplemental Food Program for Women, Infants, and Children. No such taxes on meals may be
96 imposed when sold or provided by (a) restaurants, as such term is defined in subdivision 9 a of §
97 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b)
98 volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or
99 other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three
100 times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per
101 calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising
102 activity, the gross proceeds of which are to be used by such church, religious body or organization
103 exclusively for nonprofit educational, charitable, benevolent, ~~or~~ religious, *or, if the organization is*
104 *exempt from taxation under § 501(c)(19) of the Internal Revenue Code*, fraternal purposes; (c) churches
105 that serve meals for their members as a regular part of their religious observances; (d) public or private
106 elementary or secondary schools, or public or private colleges and universities, to their students or
107 employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care
108 facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm,
109 handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes
110 or residences with restaurants, not open to the public, where meals are served and fees are charged for
111 such food and beverages and are included in rental fees.

112 Also, the tax shall not be levied on meals: (a) when used or consumed and paid for by the
113 Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided
114 by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind,
115 handicapped, or needy persons in their homes, or at central locations; or (c) provided by private
116 establishments that contract with the appropriate agency of the Commonwealth to offer food, food
117 products, or beverages for immediate consumption at concession prices to elderly, infirm, blind,
118 handicapped, or needy persons in their homes or at central locations.

119 In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business
120 enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on

property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

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

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

D. ~~Expired.~~