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HOUSE BILL NO. 217

Offered January 13, 2016

Prefiled December 28, 2015

A *BILL to amend and reenact §§ 58.1-3509 and 58.1-3706 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 35 of Title 58.1 an article numbered 2.1, consisting of a section numbered 58.1-3508.7, relating to establishing maximum machinery and tools, merchants' capital, and local license tax rates.*

Patron—LeMunyon

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3509 and 58.1-3706 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 35 of Title 58.1 an article numbered 2.1, consisting of a section numbered 58.1-3508.7, as follows:

*Article 2.1.**Maximum Tax on Machinery and Tools.***§ 58.1-3508.7. Maximum tax on machinery and tools.**

No rate or assessment ratio in any county, city, or town on any classification or subclassification of machinery and tools used in a business shall be greater than such rate and ratio applicable to such classification or subclassification as of January 1, 2016, regardless of whether such business machinery and tools is taxed under Article 2 (§ 58.1-3507 et seq.) or as tangible personal property.

§ 58.1-3509. Merchants' capital subject to local taxation; rate limit.

The capital of merchants is segregated for local taxation only; however, no county, city, or town shall be required to impose a tax on such capital. However, no rate or assessment ratio in any county, city, or town for merchants' capital shall be greater than such rate and ratio as was in effect in such county, city, or town on January 1, 1978. Further, no rate or assessment ratio in any county, city, or town on any classification or subclassification of merchants' capital shall be greater than such rate and ratio applicable to such classification or subclassification as of January 1, 2016.

§ 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

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59 for such category in subsection A.

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

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

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

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

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

91 3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county
92 manager plan of government, the following shall govern the taxation of the licensees described in
93 subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors
94 receiving identifiable federal appropriations for research and development services as defined in
95 § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic
96 systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v)
97 electronic and physical sciences may be separately classified by any such county and subject to tax at a
98 license tax rate not to exceed the limits set forth in subsections A through C above as to such federal
99 funds received in payment of such contracts upon documentation provided by such persons, firms, or
100 corporations to the local commissioner of revenue or finance officer confirming the applicability of this
101 subsection.

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

112 The provisions of this subsection shall not apply to any person or entity (i) not conducting business
113 as a gas retailer in the county, city, or town for the entire license year immediately preceding the license
114 year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to
115 § 58.1-3703 for the license year immediately preceding the license year of such increase.

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

118 F. Notwithstanding any other provision of law, a locality shall not impose a fee pursuant to this
119 chapter on any classification or subclassification of business in excess of the rate of the fee imposed by
120 the locality on the classification or subclassification as of January 1, 2016. Nor shall a locality impose

121 a tax pursuant to this chapter on any classification or subclassification of business in excess of the rate
122 of the tax imposed by the locality on the classification or subclassification as of January 1, 2016. The
123 provisions of this subsection shall not be construed or interpreted as prohibiting a locality from
124 imposing a local license tax on the Virginia taxable income of a business pursuant to § 58.1-3702,
125 provided that the tax shall not exceed the rate of tax imposed by the locality on the classification or
126 subclassification of business as of January 1, 2016. Any locality that imposes a local license tax on
127 Virginia taxable income on or after January 1, 2016, may not thereafter impose such tax on gross
128 receipts.