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HOUSE BILL NO. 1948

Offered January 9, 2019

Prefiled January 6, 2019

A BILL to amend and reenact §§ 58.1-3286, 58.1-3343, 58.1-3703, and 58.1-3959 of the Code of Virginia and to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 37.2, consisting of a section numbered 58.1-3746, relating to local salt severance license taxes.

 Patron—Campbell, J.L.

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3286, 58.1-3343, 58.1-3703, and 58.1-3959 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 37.2, consisting of a section numbered 58.1-3746, as follows:

§ 58.1-3286. Mineral lands to be specially and separately assessed; severance tax.

The several commissioners of the revenue shall, as soon as practicable after January 1 of each year, specially and separately assess at the fair market value all mineral lands and the improvements thereon and shall enter the same on the land books of their respective counties separately from other lands charged thereon.

The commissioner, in assessing mineral lands, shall set forth upon the land book:

1. The area and the fair market value of such portion of each tract as is improved and under development;

2. The fair market value of the improvements upon each tract; and

3. The area and fair market value of such portion of each tract not under development.

Notwithstanding any other provision of law and subject to the approval of the Board of Supervisors of Buchanan County, the commissioner of the revenue of the county may reassess gas wells and related improvements on an annual basis, provided that such gas wells and related improvements shall be reassessed in the general reassessment for the locality, as required by § 58.1-3287, and provided further a settlement agreement between the County and a taxpayer may provide a methodology for determining fair market value.

In the alternative to the procedure outlined in subdivision 1 above, any county or city may impose by ordinance a severance tax on all coal and gases extracted from the land lying within its jurisdiction. The rate of such tax shall not exceed one percent of the gross receipts from such coal or gases. Any such county or city may further require any producer of such coal or gases and any common carrier to maintain records showing the quantities of coal and gases which they have produced or transported, respectively.

If the surface of the land is held by one person, and the coal, iron and other minerals, mineral waters, gas or oil under the surface are held by another person, the estate therein of each and the relative fair market value of their respective interests shall be ascertained by the commissioner. If the surface of the land and the coal, iron and other minerals, mineral waters, gas or oil under the surface are owned by the same person, the commissioner shall ascertain the fair market value of the land, exclusive of the coal, iron, other minerals, mineral waters, gas or oils. He shall also ascertain the fair market value of the coal, iron, other minerals, mineral waters, gas, and oils and shall assess each at such ascertained values, stating separately in every case the value of the surface of the land and the value of the coal, iron, other minerals, mineral waters, gas and oils under the surface.

The commissioner of the revenue of any county or city is authorized to enter into agreements with taxpayers pertaining to the fair market value of the property taxed under this section. All such agreements entered into on or after January 1, 2013, but prior to July 1, 2014, between the commissioner of the revenue of any county or city and any taxpayer are deemed to be bona fide and are valid and enforceable.

If a county or city levies a severance tax on salt pursuant to the provisions of Chapter 37.2 (§ 58.1-3746 et seq.), it shall not levy a tax pursuant to this section.

§ 58.1-3343. Effect of lien on certain real estate jointly owned.

The lien on real estate owned by more than one person as tenants in common, joint tenants or otherwise for the payment of all prior, present and subsequent taxes and levies or assessments thereof, including any tax, levy, or assessment authorized under § 58.1-3712, 58.1-3713, 58.1-3713.4, or 58.1-3741, or § 58.1-3746 shall not be impaired if such real estate was or is assessed in the name of one of such owners with the notation, "and another," or "and others," or "and wife," or "and husband," or

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the appropriate abbreviations of such words, or their legal equivalents, so as to indicate that the real estate was or is owned by more than one person.

§ 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. For purposes of this subdivision, this shall include a manufacturer that is also a defense production business selling manufacturing, rebuilding, repair, and maintenance services at the place of manufacture (i) to the United States or (ii) for which consent of the United States is required;

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 and Chapters 37.1 (§ 58.1-3740 et seq.) and 37.2 (§ 58.1-3746 et seq.);

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 nonprofit organization described in Internal Revenue Code § 501(c)(3) or 501(c)(19) 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, "nonprofit organization" means an organization that is described in Internal Revenue Code § 501(c)(3) or 501(c)(19), and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions exempt from federal income tax under Internal Revenue Code § 501(c)(3) 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 that 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 the nonprofit organizations described in subdivision a;

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 (§ 33.2-1800 et seq.) or similar federal law.

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.

LOCAL SALT SEVERANCE LICENSE TAX.

§ 58.1-3746. Counties and cities authorized to levy severance tax on salt.**A. For purposes of this section:**

"Gross receipts" means fair market value of salt measured at the time it is (i) utilized or sold for utilization in the county or city within which it is severed or (ii) placed in transit for shipment from such county or city. In calculating fair market value, no person shall be allowed to claim deductions including depreciation, marketing fees, overhead, maintenance, transportation fees, and personal property taxes.

"Salt" means a compound that is chemically classified as sodium chloride.

B. The governing body of any county or city may levy a license tax on every person engaging in the business of severing salt from the earth. Such tax shall be at a rate not to exceed one percent of the gross receipts from the sale of salt severed within such county or city. All taxes levied pursuant to this section shall be paid to the locality within which the salt is severed from the earth.

C. Any county or city that levies a tax pursuant to this chapter shall not levy a tax pursuant to the provisions of § 58.1-3286.

D. Any county or city levying a license tax pursuant to this chapter may require persons engaging in the business of severing salt from the earth and common carriers to maintain records and file reports showing the quantities of and receipts from salt produced or transported.

E. There shall be a priority lien upon a debtor's estate for all taxes due and owing under the authority granted by this chapter. Such lien shall be inferior only to real estate and personal property taxes, levies, and penalties; any obligation, bond, or instrument used in lieu of a bond to the Department of Mines, Minerals and Energy under Title 45.1; and liens benefiting the Commonwealth. This lien shall not require a distraint action prior to enforcement.

The purchaser at a sale of real estate to which the lien under this section applies shall cause the proceeds of such sale to be applied to the payment of all taxes and levies assessed and due under the authority granted by this chapter, the provisions of § 55-59.4 notwithstanding. The terms "taxes" and "levies" as used in this section include the penalties and interest accruing on such taxes and levies in pursuance of law. In addition to existing remedies for the collection of taxes and levies, the lien imposed hereby shall be enforceable in the same manner as provided in Article 4 (§ 58.1-3965 et seq.) of Chapter 39. There shall be a further lien upon the rents of such real estate, whether the same be in money or in kind, for taxes and levies of the current year.

F. The provisions of § 58.1-3703.1, with the exception of subdivisions A 1 and 3 of such section, shall apply to the taxes authorized by this chapter, *mutatis mutandis*.

§ 58.1-3959. Petition to ascertain delinquent taxes; exoneration from lien.

Any person interested in real estate may file a petition in the circuit court of the county or city wherein the assessment of taxes was made, for the purpose of having ascertained any and all delinquent taxes due upon such real estate or any delinquent taxes imposed under the authority of § 58.1-3712, 58.1-3713, 58.1-3713.4, ~~or~~ 58.1-3741, or 58.1-3746. A copy of the petition shall be served upon the county or city attorney, or if there is none, on the attorney for the Commonwealth at least ten days before the date upon which the petition specifies the court shall be asked to hear the petition. The court may refer the question to a commissioner in chancery for report thereon. The court shall enter final judgment determining what, if any, taxes are due upon the real estate, including any taxes covered by the lien described in § 58.1-3745, mentioned in the petition. Upon the payment of any amount so ascertained by the court, and the costs of the proceeding, the land shall be held free and clear of any such tax lien. No writ tax shall be charged. The clerk shall be entitled to a fee of one dollar which, together with other costs, including such fee as the court may deem proper to allow the commissioner in chancery, shall be paid by the petitioner.