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HOUSE BILL NO. 2540

Offered January 9, 2019

Prefiled January 9, 2019

A BILL to amend and reenact §§ 58.1-603.1, 58.1-603.2, 58.1-604.01, and 58.1-611.1 of the Code of Virginia, relating to sales and use tax; reduced rate on essential personal hygiene products.

Patrons—Byron, Campbell, R.R., Head, Hugo, Keam, McGuire, Orrock, Thomas and Wright

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603.1, 58.1-603.2, 58.1-604.01, and 58.1-611.1 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-603.1. (Contingent expiration date) Additional state sales tax in certain counties and cities.

In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption *and essential personal hygiene products*, as *such terms* are defined in § 58.1-611.1. Such tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § 58.1-603.

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-603.2. (For contingent effective date and contingent expiration date, see Acts 2018, c. 850) Additional state sales and use tax in certain counties and cities of historic significance; Historic Triangle Marketing Fund.

A. For purposes of this section, "Historic Triangle" means all of the City of Williamsburg and the Counties of James City and York.

B. In addition to the sales tax imposed pursuant to §§ 58.1-603 and 58.1-603.1, there is hereby levied and imposed in the Historic Triangle a retail sales tax at the rate of one percent. Such tax shall not be levied upon food purchased for human consumption *and essential personal hygiene products*, as *such terms* are defined in § 58.1-611.1. Such tax shall be added to the rate of the state sales tax imposed pursuant to §§ 58.1-603 and 58.1-603.1 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § 58.1-603.

C. In addition to the use tax imposed pursuant to §§ 58.1-604 and 58.1-604.01, there is hereby levied and imposed in the Historic Triangle a retail use tax at the rate of one percent. Such tax shall not be levied upon food purchased for human consumption *and essential personal hygiene products*, as *such terms* are defined in § 58.1-611.1. Such tax shall be added to the rate of the state use tax imposed pursuant to §§ 58.1-604 and 58.1-604.01 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered

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59 and collected by the Tax Commissioner in the same manner and subject to the same penalties as
60 provided for the state use tax under § 58.1-604.

61 D. The revenue generated and collected pursuant to the tax authorized under this section, less the
62 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller as follows:

63 1. Fifty percent of the revenues shall be deposited into the Historic Triangle Marketing Fund created
64 pursuant to subsection E and used for the purposes set forth therein; and

65 2. Fifty percent of the revenues shall be deposited into a special fund hereby created on the books of
66 the Comptroller under the name "Collections of Historic Triangle Sales Tax" and distributed to the
67 locality in which the sales or use tax was collected. The revenues received by a locality pursuant to this
68 subsection shall not be used to reduce the amount of other revenues appropriated by such locality to or
69 for use by the Greater Williamsburg Chamber and Tourism Alliance below the amount provided in fiscal
70 year 2018.

71 E. 1. There is hereby created in the state treasury a special nonreverting fund to be known as the
72 Historic Triangle Marketing Fund, referred to in this section as "the Fund," to be managed and
73 administered by the Tourism Council of the Greater Williamsburg Chamber and Tourism Alliance. The
74 Fund shall be established on the books of the Comptroller. All revenues generated pursuant to this
75 section shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the
76 Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including
77 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the
78 Fund. Moneys in the Fund shall be used solely for the purposes of marketing, advertising, and
79 promoting the Historic Triangle area as an overnight tourism destination, with the intent to attract
80 visitors from a sufficient distance so as to require an overnight stay of at least one night, as set forth in
81 this subsection. Expenditures and disbursements from the Fund shall be made by the State Treasurer on
82 warrants issued by the Comptroller upon written request signed by the Secretary of Finance.

83 2. The Tourism Council of the Greater Williamsburg Chamber and Tourism Alliance (the Council)
84 shall consist of members as follows: one member of the James City County Board of Supervisors, one
85 member of the York County Board of Supervisors; one member of the Williamsburg City Council, one
86 representative of the Colonial Williamsburg Foundation, one representative of the Jamestown-Yorktown
87 Foundation, one representative of Busch Gardens Williamsburg, one representative of Historic
88 Jamestowne, one representative of the Williamsburg Hotel and Motel Association, and one representative
89 of the Williamsburg Area Restaurant Association. The Chief Executive Officer of the Virginia Tourism
90 Alliance and the Chief Executive Officer of the Virginia Tourism Corporation shall serve as ex officio,
91 non-voting members of the Council.

92 3. The Council shall establish the Historic Triangle Office of Marketing and Promotion (the Office)
93 to administer a program of marketing, advertising, and promotion to attract visitors to the Historic
94 Triangle area, as required by this subsection. The Council shall use moneys in the Fund to fund the pay
95 for necessary expenses of the Office and to fund the activities of the Office. The Office shall be
96 overseen by a professional with extensive experience in marketing or advertising and in the tourism
97 industry. The Office shall be responsible for (i) developing and implementing, in consultation with the
98 Council, long-term and short-term strategic plans for advertising and promoting the numerous facilities,
99 venues, and attractions devoted to education, historic preservation, amusement, entertainment, and dining
100 in the Historic Triangle as a cohesive and unified travel destination for local, national, and international
101 travelers; (ii) assisting, upon request, with the coordination of cross-advertising and cross-marketing
102 efforts between various tourism venues and destinations in the Historic Triangle region; (iii) identifying
103 strategies for both increasing the number of overnight visitors to the region and increasing the average
104 length of stay of tourists in the region; and (iv) performing any other function related to the promotion
105 of the Historic Triangle region as may be identified by the Council.

106 4. The Council shall report annually on its long-term and short-term strategic plans and the
107 implementation of such plans; marketing efforts; metrics regarding tourism in the Historic Triangle
108 region; use of the funds in the Fund; and any other details relevant to the work of the Council and the
109 Office. Such report shall be delivered no later than December 1 of each year to the managers or chief
110 executive officers of the City of Williamsburg and the Counties of James City and York, and to the
111 Chairmen of the House Committees on Finance and Appropriations and the Senate Committee on
112 Finance.

113 **§ 58.1-604.01. (Contingent expiration date) Additional state use tax in certain counties and**
114 **cities.**

115 In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each
116 county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of
117 Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most
118 recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a
119 total transit ridership of not less than 15 million riders per year across all transit systems within the
120 Planning District or (ii) as shown by the most recent United States Census meets the population criteria

set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption *and essential personal hygiene products*, as *such terms are* defined in § 58.1-611.1. Such tax shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § 58.1-604.

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. For any additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption and essential personal hygiene products.

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. On and after July 1, 2005, the tax rate on such food *and essential personal hygiene products* shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption *and essential personal hygiene products* pursuant to §§ 58.1-605 and 58.1-606.

C. 1. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

2. As used in this section, "*essential personal hygiene products*" means (i) *nondurable incontinence products such as diapers, disposable undergarments, pads, and bed sheets; and (ii) menstrual cups and pads, pantyliners, sanitary napkins, tampons, and other products used to absorb or contain menstrual flow. "Essential personal hygiene products" does not include any item that is otherwise exempt pursuant to this chapter.*