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SENATE BILL NO. 484

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 58.1-3818, 58.1-3819, 58.1-3830, 58.1-3833, 58.1-3834, and 58.1-3840 of the Code of Virginia and to repeal §§ 58.1-3818.01, 58.1-3818.03, 58.1-3818.04, and 58.1-3831, relating to local taxing authority.*

Patron—Favola

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3818, 58.1-3819, 58.1-3830, 58.1-3833, 58.1-3834, and 58.1-3840 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3818. Admissions tax in counties.

A. Fairfax, Arlington, Dinwiddie, Prince George and Brunswick Counties are *Any county* is hereby authorized to levy a tax on admissions charged for attendance at any event. ~~The tax shall not exceed 10 percent of the amount of charge for admission to any such event.~~ Notwithstanding any other provisions of law, the governing bodies of such counties shall prescribe by ordinance the terms, conditions, and amount of such tax and may classify between events conducted for charitable *purposes* and ~~those events~~ conducted for noncharitable purposes.

B. Notwithstanding the provisions of subsection A, Culpeper County and New Kent County are hereby authorized to levy a tax on admissions charged for attendance at any event as set forth in subsection A.

C. Notwithstanding the provisions of subsection A, Charlotte County, Clarke County, Madison County, Nelson County, and Sussex County are hereby authorized to levy a tax on admissions charged for attendance at any spectator event; however, a tax shall not be levied on admissions charged to participants in order to participate in any event. The tax shall not exceed 10 percent of the amount of charge for admission to any event. Notwithstanding any other provisions of law, the governing body of such county shall prescribe by ordinance the terms, conditions and amount of such tax and may classify between the events as set forth in § 58.1-3817.

D. Notwithstanding the provisions of subsections A, B and C *subsection A*, localities may, by ordinance, elect not to levy an admissions tax on admission to an event, provided that the purpose of the event is solely to raise money for charitable purposes and that the net proceeds derived from the event will be transferred to an entity or entities that are exempt from sales and use tax pursuant to § 58.1-609.11.

§ 58.1-3819. Transient occupancy tax.

A. 1. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied; however, Accomack County, Albemarle County, Alleghany County, Amherst County, Augusta County, Bedford County, Bland County, Botetourt County, Brunswick County, Campbell County, Caroline County, Carroll County, Craig County, Cumberland County, Dickenson County, Dinwiddie County, Floyd County, Franklin County, Frederick County, Giles County, Gloucester County, Goochland County, Grayson County, Greene County, Greenville County, Halifax County, Highland County, Isle of Wight County, James City County, King George County, Loudoun County, Madison County, Mecklenburg County, Montgomery County, Nelson County, Northampton County, Page County, Patrick County, Powhatan County, Prince Edward County, Prince George County, Prince William County, Pulaski County, Rockbridge County, Rockingham County, Russell County, Smyth County, Spotsylvania County, Stafford County, Tazewell County, Warren County, Washington County, Wise County, Wythe County, and York County may levy a transient occupancy tax not to exceed five percent, and

2. *Unless otherwise provided in this article, any county that imposes a transient occupancy tax at a rate greater than two percent shall, by ordinance, provide that (i) any excess from a rate over two percent shall be designated and spent solely for such purpose as was authorized under this article prior to January 1, 2020, or (ii) if clause (i) is inapplicable, any excess from a rate over two percent but not exceeding five percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with the local tourism industry organizations,*

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59 including representatives of lodging properties located in the county, attract travelers to the locality,
60 increase occupancy at lodging properties, and generate tourism revenues in the locality. *Unless otherwise*
61 *provided in this article, for any county that imposes a transient occupancy tax pursuant to this section*
62 *or an additional transient occupancy tax pursuant to another provision of this article, any excess over*
63 *five percent, combining the rates of all taxes imposed pursuant to this article, shall not be restricted in*
64 *its use and may be spent in the same manner as general revenues.* If any locality has enacted an
65 additional transient occupancy tax pursuant to subsection C of § 58.1-3823, then the governing body of
66 the locality shall be deemed to have complied with the requirement that it consult with local tourism
67 industry organizations, including lodging properties. If there are no local tourism industry organizations
68 in the locality, the governing body shall hold a public hearing prior to making any determination
69 relating to how to attract travelers to the locality and generate tourism revenues in the locality.

70 B. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied
71 by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding
72 houses, travel campgrounds, and other facilities offering guest rooms. In addition, that portion of any tax
73 imposed hereunder in excess of two percent shall not apply to travel campgrounds in Stafford County.

74 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
75 to levy such a transient occupancy tax. The county tax limitations imposed pursuant to § 58.1-3711 shall
76 apply to any tax levied under this section, mutatis mutandis.

77 D. Any county, city or town that requires local hotel and motel businesses, or any class thereof, to
78 collect, account for and remit to such locality a local tax imposed on the consumer may allow such
79 businesses a commission for such service in the form of a deduction from the tax remitted. Such
80 commission shall be provided for by ordinance, which shall set the rate thereof at no less than three
81 percent and not to exceed five percent of the amount of tax due and accounted for. No commission shall
82 be allowed if the amount due was delinquent.

83 E. All transient occupancy tax collections shall be deemed to be held in trust for the county, city or
84 town imposing the tax.

85 **§ 58.1-3830. Local cigarette taxes authorized; use of dual die or stamp to evidence payment of**
86 **both county, city, or town and state tax on cigarettes.**

87 A. ~~No provision of Chapter 40 (§ 58.1-1000 et seq.) of this title shall be construed to deprive~~
88 ~~counties, cities, and towns of the right~~ Any county, city, or town is authorized to levy taxes upon the
89 sale or use of cigarettes, ~~provided such county, city or town had such power prior to January 1, 1977.~~
90 The governing body of any county, city, or town ~~which~~ that levies a cigarette tax and permits the use of
91 meter impressions or stamps to evidence its payment may authorize an officer of the county, city, or
92 town or joint enforcement authority to enter into an arrangement with the Department of Taxation under
93 which a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of
94 both the county, city, or town tax, and the state tax, and the Department is hereby authorized to enter
95 into such an arrangement. The procedure under such an arrangement shall be such as may be agreed
96 upon by and between the authorized county, city, town or joint enforcement authority officer and the
97 Department.

98 B. Any county cigarette tax imposed shall not apply within the limits of any town located in such
99 county where such town now, or hereafter, imposes a town cigarette tax. However, if the governing
100 body of any such town shall provide that a county cigarette tax, as well as the town cigarette tax, shall
101 apply within the limits of such town, then such cigarette tax may be imposed by the county within such
102 town.

103 **§ 58.1-3833. County food and beverage tax.**

104 A. 1. Any county is hereby authorized to levy a tax on food and beverages sold, for human
105 consumption, by a restaurant, as such term is defined in § 35.1-1; ~~not to exceed four percent of the~~
106 ~~amount charged for such food and beverages.~~ Such tax shall not be levied on food and beverages sold
107 through vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias
108 operated by industrial plants for employees only; (iii) restaurants to their employees as part of their
109 compensation when no charge is made to the employee; (iv) volunteer fire departments and volunteer
110 emergency medical services agencies; nonprofit churches or other religious bodies; or educational,
111 charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning
112 with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of food and
113 beverages (excluding gross receipts from the first three times), as a fundraising activity, the gross
114 proceeds of which are to be used by such church, religious body or organization exclusively for
115 nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for
116 their members as a regular part of their religious observances; (vi) public or private elementary or
117 secondary schools or institutions of higher education to their students or employees; (vii) hospitals,
118 medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or
119 residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women,
120 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.

2. 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.

3. 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. However, no referendum initiated by a resolution of the board of supervisors shall be authorized in a county in the three calendar years subsequent to the electoral defeat of any referendum held pursuant to this section in 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.

4. Any referendum held for the purpose of approving a county food and beverage tax pursuant to this section shall, in the language of the ballot question presented to voters, contain the following text in a paragraph unto itself: "If this food and beverage tax is adopted and a maximum tax rate of four percent is imposed, then the total tax imposed on all prepared food and beverage shall be ..." followed by the total, expressed as a percentage, of all existing ad valorem taxes applicable to the transaction added to the four percent county food and beverage tax to be approved by the referendum.

5. Notwithstanding any other provision of this section, if a county that has not imposed a county food and beverage tax adopts an ordinance or resolution pursuant to subdivision 1 of ~~§ 15.2-2607~~ providing for the payment of the principal and premium, if any, and interest on bonds issued in accordance with the Public Finance Act (~~§ 15.2-2600 et seq.~~) from revenue collected from a county food and beverage tax, then the ballot may provide, as a single question:

- a. The purpose or purposes of the bonds to be issued;
- b. The estimated maximum amount of such bonds proposed in the notice required in subsection A of ~~§ 15.2-2606~~;
- c. The request for approval by the voters of a county food and beverage tax authorized and levied in accordance with subdivision 3;
- d. The language required to be included in the ballot question as set forth in subdivision 4; and
- e. An explanation that the bonds shall be issued only if the county food and beverage tax is approved in the referendum.

Any referendum placed on the ballot pursuant to this subdivision 5 shall be submitted according to the procedures specified in ~~§ 24.2-684~~.

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.~~). Collection of such tax shall be in a manner prescribed by the governing body.

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

C. B. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to ~~§ 58.1-3711~~ shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax

collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

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

E. C. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) 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.

§ 58.1-3834. Apportionment of food and beverage or meals tax.

In any case where a business is located partially within two or more local jurisdictions by reason of the boundary line between the local jurisdictions passing through such place of business, and one or more of the local jurisdictions imposes the food and beverage or meals tax, the tax rate shall be computed by applying the apportionment formula in § 58.1-3709 to the food and beverage or meals tax rate of each applicable local jurisdiction. Such apportioned rate shall be rounded to the nearest one-half percent; provided, the total tax rate shall not exceed the rate authorized in § 58.1-3833.

§ 58.1-3840. Certain excise taxes permitted.

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 *and any county* may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by (a) restaurants, as such term is defined in § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b) 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 meals (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 purposes; (c) churches that serve meals for their members as a regular part of their religious observances; (d) public or private elementary or secondary schools or institutions of higher education to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) 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 meals: (1) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (2) 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 (3) 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.

In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business 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 amphitheaters.

D. [Expired.]

2. That §§ 58.1-3818.01, 58.1-3818.03, 58.1-3818.04, 58.1-3831 of the Code of Virginia are repealed.

3. That this act shall not be construed to restrict any county taxing authority as it exists under current law.

4. That the Division of Legislative Services (the Division) shall convene a work group of stakeholders to identify and make recommendations as to other amendments necessary, including repealing obsolete provisions and making technical amendments to existing provisions, to the Code of Virginia to effectuate the provisions of this act. The Division shall submit a summary of its recommendations and a draft of any recommended changes to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance no later than December 1, 2020.