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HOUSE BILL NO. 1939

Offered January 13, 2021

Prefiled January 11, 2021

A BILL to amend and reenact §§ 58.1-3833 and 58.1-3840 of the Code of Virginia, relating to food and beverage taxes; single-serving salads.

Patron—Wyatt (By Request)

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. 1. 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 § 35.1-1, not to exceed six 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 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 or institutions of higher education 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; (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; or (xi) sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500. For the exemption described in clause (xi), the sellers' annual income shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax. 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; (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.

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. 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.

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

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59 mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) alcoholic
60 beverages sold in factory sealed containers and purchased for off-premises consumption or food
61 purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C.
62 § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items:
63 sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily
64 of an assortment of vegetables, and nonfactory sealed beverages. *For purposes of this section,*
65 *"single-serving" means the same as "serving" or "serving size" as such terms are defined in 21 C.F.R. §*
66 *101.9, or its successors.*

67 **§ 58.1-3840. Certain excise taxes permitted.**

68 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town
69 having general taxing powers established by charter pursuant to or consistent with the provisions of §
70 15.2-1104 and, to the extent authorized in this chapter, any county may impose excise taxes on
71 cigarettes, admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals
72 may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in
73 addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a
74 mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal,
75 but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the
76 sales price; or (iii) food and beverages sold through vending machines or on any tangible personal
77 property purchased with food coupons issued by the United States Department of Agriculture under the
78 Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for
79 Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by (a)
80 restaurants, as such term is defined in § 35.1-1, to their employees as part of their compensation when
81 no charge is made to the employee; (b) volunteer fire departments and volunteer emergency medical
82 services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or
83 benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on
84 the first \$100,000 of gross receipts per calendar year from sales of meals (excluding gross receipts from
85 the first three times), as a fundraising activity, the gross proceeds of which are to be used by such
86 church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or
87 religious purposes; (c) churches that serve meals for their members as a regular part of their religious
88 observances; (d) public or private elementary or secondary schools or institutions of higher education to
89 their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other
90 extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged,
91 infirm, handicapped, battered women, narcotic addicts, or alcoholics; (h) age-restricted apartment
92 complexes or residences with restaurants, not open to the public, where meals are served and fees are
93 charged for such food and beverages and are included in rental fees; or (i) sellers at local farmers
94 markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500.
95 For the exemption described in clause (i), the sellers' annual income shall include income from sales at
96 all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the
97 tax.

98 Also, the tax shall not be levied on meals: (1) when used or consumed and paid for by the
99 Commonwealth, any political subdivision of the Commonwealth, or the United States; (2) provided by a
100 public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped,
101 or needy persons in their homes, or at central locations; or (3) provided by private establishments that
102 contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages
103 for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons
104 in their homes or at central locations.

105 In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business
106 enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on
107 property acquired and used by the United States for any military or naval purpose shall be required to
108 collect and remit meals taxes.

109 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this
110 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
111 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
112 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
113 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
114 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. *For purposes of*
115 *this section, "single-serving" means the same as "serving" or "serving size" as such terms are defined in*
116 *21 C.F.R. § 101.9, or its successors.*

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

121 D. [Expired.]