

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 468

An Act to amend and reenact §§ 58.1-3851.1 and 58.1-3851.2 of the Code of Virginia and to amend the Code of Virginia by adding in Article 10 of Chapter 38 of Title 58.1 a section numbered 58.1-3851.3, relating to sales and use tax; entitlement to revenues from tourism projects.

[H 1308]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3851.1 and 58.1-3851.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 10 of Chapter 38 of Title 58.1 a section numbered 58.1-3851.3 as follows:

§ 58.1-3851.1. Entitlement to tax revenues from tourism project.

A. For purposes of this section, ~~unless the context requires a different meaning:~~

"Economic development authority" means a local industrial development authority or a local or regional political subdivision, the public purpose of which is to assist in economic development.

"Gap financing" means debt financing to compensate for a shortfall in project funding between the expected development costs of an authorized tourism project and the debt and equity capital provided by the developer of the project.

B. 1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and has adopted an ordinance authorizing a tourism project to meet a deficiency identified in the adopted tourism plan approved by the Virginia Tourism Authority, and the tourism project has been certified by the State Comptroller as qualifying for the entitlement to tax revenues authorized by this section, the authorized tourism project shall be entitled to an amount equal to the revenues generated by a one percent state sales and use tax on transactions taking place on the premises of the authorized tourism project. The entitlement shall be contingent on the locality enacting an ordinance designating certain local tax revenues to the tourism project pursuant to subsection C and shall be subject to the conditions set forth in subsection D. The purpose of such entitlement shall be to assist the developer with obtaining gap financing and making payments of principal and interest thereon. The entitlement shall continue until the gap financing is paid in full. Entitled sales *and use* tax revenues shall be applied solely to payments of principal and interest on the qualified gap financing.

2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales *and use* tax revenues to the Comptroller, who shall remit such revenues to the county or city in which the authorized tourism project is located. The county or city shall remit the revenues to the economic development authority. No payments herein shall be made until an agreement exists between the developer of the authorized tourism project and the economic development authority.

3. The state sales *and use* tax entitlement established in subdivision 1 shall not include any (i) sales *and use* tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1 or (ii) revenues generated pursuant to Chapter 766 of the Acts of Assembly of 2013, *the additional state sales and use tax in certain counties and cities assessed pursuant to subsection B of § 58.1-603.1 and subsection B of § 58.1-604.01; or the additional state sales and use tax in certain counties and cities of historic significance imposed under § 58.1-603.2.*

C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized tourism project to an amount equal to the revenues generated by a one percent state sales and use tax on transactions taking place on the premises of the authorized tourism project, the local governing body of the county or city in which the authorized tourism project is located shall also direct by ordinance that an amount equal to the revenues generated by at least a one percent local sales and use tax, or an equivalent amount of other local tax revenues as designated by the ordinance, generated by transactions taking place on the premises of the authorized tourism project shall be applied to the payment of principal and interest on the qualified gap financing. Such revenues shall be remitted in the same manner, for the same time period, and under the same conditions as the remittances paid in accordance with subsection B, *mutatis mutandis*.

D. Prior to any entitlement to tax revenues for an authorized tourism project pursuant to subsections B and C, the owner of such project shall have a minimum of 70 percent of funding for the project in place through debt or equity, enter into a performance agreement with the economic development authority or political subdivision, and enter into an agreement to pay an access fee. The access fee shall be equivalent to the state sales *and use* tax revenue generated by and returned to the project pursuant to subdivision B 1 and shall be collected by the locality and remitted to the economic development authority on a quarterly basis. The access fee and the sales *and use* tax entitlement shall be used solely

to make payments of principal and interest on the qualified gap ~~funding~~ *financing*.

E. In the event that the total amount of sales *and use* tax entitlement and the access fee exceeds any annual debt service on the qualified gap financing, such excess shall be paid to the principal of the loan until the qualified gap financing is paid in full.

F. A tourism project that is entitled to and receives revenues pursuant to this section shall not be eligible to receive revenues pursuant to § 58.1-608.3 ~~or~~, 58.1-3851.2, *or* 58.1-3851.3.

§ 58.1-3851.2. Entitlement to tax revenues from tourism project of regional significance.

A. For purposes of this section, ~~unless the context requires a different meaning:~~

"Economic development authority" means a local industrial development authority or a local or regional political subdivision, the public purpose of which is to assist in economic development.

"Gap financing" means debt financing to compensate for a shortfall in project funding between the expected development costs of an authorized tourism project of regional significance and the debt and equity capital provided by the developer of the project.

"Tourism project of regional significance" means a tourism project that meets the requirements set forth in subdivision B 1 and that additionally represents a new capital investment of at least \$100 million in a new tourism facility or in a substantial and significant renovation or expansion of an existing tourism facility by a private entity in the Commonwealth and, as determined by the Virginia Tourism Authority, that supports increased hotel occupancy, new job creation, an increase in the number of out-of-state visitors to the Commonwealth, and other factors of significant fiscal and economic impact. Any property, real, personal, or mixed, that is necessary or complementary, such as arenas, sporting facilities, hotels, and other tourism venues, developed in connection with any such tourism project of regional significance, including facilities for food preparation and serving, parking facilities, and administrative offices, is encompassed within this definition, as is theme-related retail activity by vendors or the private entity owner of the project that occurs on site and directly supports the tourism mission of the project. A tourism project of regional significance does not include, for purposes of this section, general retail outlets, ancillary retail structures not directly related to the tourism purpose of the project or other retail establishments commonly referred to as shopping centers or malls or residential condominiums, townhomes, or other residential units.

B. 1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and has adopted an ordinance authorizing a tourism project of regional significance to meet a deficiency identified in the adopted tourism plan approved by the Virginia Tourism Authority, and if the tourism project of regional significance has been certified by the State Comptroller as qualifying for the entitlement to tax revenues authorized by this section, the authorized tourism project of regional significance shall be entitled to an amount equal to the revenues generated by a 1.5 percent state sales and use tax on transactions taking place on the premises of the authorized tourism project of regional significance. The entitlement shall be contingent on the locality's enacting an ordinance designating certain local revenues to the project pursuant to subsection C and shall be subject to the conditions set forth in subsection D. The purpose of such entitlement shall be to assist the developer with obtaining gap financing and making payments of principal and interest thereon.

2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales *and use* tax revenues to the Comptroller, who shall remit such revenues to the county or city in which the authorized tourism project of regional significance is located. The county or city shall remit the revenues to the economic development authority. No payments herein shall be made until an agreement exists between the developer of the authorized tourism project of regional significance and the economic development authority. The entitlement shall continue until the gap financing is paid in full or for the length of time specified in the agreement between the developer and the economic development authority, but in no event shall the entitlement extend beyond 20 years from the date of the initial entitlement. Entitled sales *and use* tax revenues shall be applied solely to payments of principal and interest on the qualified gap financing.

3. The state sales *and use* tax entitlement established in subdivision 1 shall not include any (i) sales *and use* tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1 or (ii) revenues generated pursuant to Chapter 766 of the Acts of Assembly of 2013, *the additional state sales and use tax in certain counties and cities assessed pursuant to subsection B of § 58.1-603.1 and subsection B of § 58.1-604.01; or the additional state sales and use tax in certain counties and cities of historic significance imposed under § 58.1-603.2.*

C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized tourism project of regional significance to an amount equal to the revenues generated by a 1.5 percent state sales and use tax on transactions taking place on the premises of the authorized tourism project of regional significance, the local governing body of the county or city in which the authorized tourism project of regional significance is located shall also direct by ordinance that an amount of local revenues, from any authorized source of revenues available to the locality, equal to the revenues generated by at least a 1.5 percent state sales and use tax generated by transactions taking place on the premises of the authorized tourism project of regional significance shall be applied to the payment of

principal and interest on the qualified gap financing. Such revenues shall be remitted in the same manner, for the same time period, and under the same conditions as the remittances paid in accordance with subsection B, *mutatis mutandis*.

D. Prior to any entitlement to tax revenues for an authorized tourism project of regional significance pursuant to subsections B and C, the owner of such project shall have a minimum of 80 percent of funding for the project in place through debt or equity, enter into a performance agreement with the economic development authority or political subdivision, and enter into an agreement to pay an access fee. The access fee shall be equivalent to the state sales *and use* tax revenue generated by and returned to the project pursuant to subdivision B 1 and shall be collected by the locality and remitted to the economic development authority on a quarterly basis. The access fee and the state and local contributions pursuant to this section shall be used solely to make payments of principal and interest on the qualified gap ~~funding~~ financing.

E. In the event that the total amount of state and local contributions pursuant to this section and the access fee exceeds any annual debt service on the qualified gap financing, such excess shall be paid to the principal of the loan until the qualified gap financing is paid in full.

F. Neither the Commonwealth nor any political subdivision of the Commonwealth shall incur any debt under this section. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any debt or debt financing, or meeting any contractual obligation incurred by the owner or developer of any authorized tourism project of regional significance.

G. An authorized tourism project of regional significance that is entitled to and receives revenues pursuant to this section shall not be eligible to receive revenues pursuant to § 58.1-608.3 ~~or~~, 58.1-3851.1, or 58.1-3851.3.

§ 58.1-3851.3. Entitlement to tax revenues from a major tourism project.

A. For purposes of this section:

"Economic development authority" means a local industrial development authority or a local or regional political subdivision, the public purpose of which is to assist in economic development.

"Gap financing" means debt financing to compensate for a shortfall in project funding between the expected development costs of a major tourism project and the debt and equity capital provided by the developer of the project and any refinancing of a gap financing. "Gap financing" includes a developer's primary debt financing, as well as any refinancing thereof, if the entitlements to tax revenues provided under this section are pledged as collateral for such primary debt financing.

"Major tourism project" means a tourism project that meets the requirements set forth in subdivision B 1 and that additionally represents a new capital investment of at least \$500 million in a new tourism facility or in a substantial and significant renovation or expansion of an existing tourism facility by a private entity in the Commonwealth, that will result in the creation of at least 500 net new jobs, and, as determined by the Virginia Tourism Authority, that supports increased hotel occupancy, an increase in the number of out-of-state visitors to the Commonwealth, and other factors of significant fiscal and economic impact. Any property, real, personal, or mixed, that is necessary or complementary, such as arenas, sporting facilities, hotels, and other tourism venues, developed in connection with any such major tourism project, including facilities for food preparation and serving, parking facilities, and administrative offices, is encompassed within this definition, as is theme-related retail activity that occurs on site and directly supports the tourism mission of the project. "Major tourism project" does not include, for purposes of this section, (i) general retail outlets, ancillary retail structures not directly related to the tourism purpose of the project, or other retail establishments commonly referred to as shopping centers or malls or (ii) residential condominiums, townhomes, or other residential units.

B. 1. If a locality has established a tourism zone pursuant to § 58.1-3851, has adopted an ordinance establishing a tourism plan as determined by guidelines set forth by the Virginia Tourism Authority, and has adopted an ordinance authorizing a major tourism project to meet a deficiency identified in the adopted tourism plan approved by the Virginia Tourism Authority, and if the major tourism project has been certified by the State Comptroller as qualifying for the entitlement to tax revenues authorized by this section, the major tourism project shall be entitled to an amount equal to the revenues generated by a two percent state sales and use tax on transactions taking place on the premises of the authorized major tourism project. The entitlement shall be contingent on the locality's enacting an ordinance designating certain local revenues to the project pursuant to subsection C and shall be subject to the conditions set forth in subsection D. The entitlement shall also be subject to review and approval by the MEI Project Approval Commission pursuant to § 30-310. The purpose of such entitlement shall be to assist the developer with obtaining gap financing and making payments of principal and interest thereon.

2. On a quarterly basis, the Tax Commissioner shall certify the amount of the entitled sales and use tax revenues to the Comptroller, who shall remit such revenues to the county or city in which the authorized major tourism project is located. The county or city shall remit the revenues to the economic development authority or such other entity as the economic development authority shall designate. No

payments herein shall be made until an agreement exists between the developer of the authorized major tourism project and the economic development authority. The entitlement shall continue until the gap financing is paid in full or for the length of time specified in the agreement between the developer and the economic development authority, but in no event shall the entitlement extend beyond 20 years from the date of the accrual of the initial entitlement. Entitled sales and use tax revenues shall be applied solely to payments of principal and interest on the qualified gap financing.

3. The state sales and use tax entitlement established in subdivision 1 shall not include any (i) sales and use tax revenues dedicated pursuant to § 58.1-638 or 58.1-638.1 or (ii) revenues generated pursuant to Chapter 766 of the Acts of Assembly of 2013, the additional state sales and use tax in certain counties and cities assessed pursuant to subsection B of § 58.1-603.1 and subsection B of § 58.1-604.01; or the additional state sales and use tax in certain counties and cities of historic significance imposed under § 58.1-603.2.

C. If a locality has adopted the ordinances required by subdivision B 1 to entitle an authorized major tourism project to an amount equal to the revenues generated by a two percent state sales and use tax on transactions taking place on the premises of the authorized major tourism project, or subsequently acquired premises for the major tourism project, the local governing body of the county or city in which the authorized major tourism project is located shall also direct by ordinance that an amount of local revenues, from any authorized source of revenues available to the locality, equal to the revenues generated by at least a two percent state sales and use tax generated by transactions taking place on the premises of the authorized major tourism project, or subsequently acquired premises for the authorized major tourism project, shall be applied to the payment of principal and interest on the qualified gap financing. Such revenues shall be remitted in the same manner, for the same time period, and under the same conditions as the remittances paid in accordance with subsection B, *mutatis mutandis*.

D. Prior to any entitlement to tax revenues for a major tourism project pursuant to subsections B and C, the owner of such project shall have a minimum of 70 percent of funding for the project in place through debt or equity, enter into a performance agreement with the economic development authority or political subdivision, and enter into an agreement to pay an access fee. The access fee shall be equivalent to the state sales and use tax revenue generated by and returned to the project pursuant to subdivision B 1 and shall be collected by the locality and remitted to the economic development authority or such other entity as the economic development authority shall designate on a quarterly basis. The access fee and the state and local contributions pursuant to this section shall be used solely to make payments of principal and interest on the qualified gap financing.

E. In the event that the total amount of state and local contributions pursuant to this section and the access fee exceeds any annual debt service on the qualified gap financing, such excess shall be paid to the principal of the loan until the qualified gap financing is paid in full.

F. Neither the Commonwealth nor any political subdivision of the Commonwealth shall incur any debt under this section. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any debt or debt financing, or meeting any contractual obligation incurred by the owner or developer of any authorized major tourism project.

G. A major tourism project that is entitled to and receives revenues pursuant to this section shall not be eligible to receive revenues pursuant to § 58.1-608.3, 58.1-3851.1, or 58.1-3851.2.