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HOUSE BILL NO. 1686

Offered January 11, 2023

Prefiled January 9, 2023

A BILL to amend and reenact §§ 58.1-605 and 58.1-606 of the Code of Virginia, relating to local sales and use tax; exemptions.

Patrons—Greenhalgh and Head

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-605 and 58.1-606 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section or § 58.1-605.1.

B. 1. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 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 on a local sales tax.

2. *The council of any city and the governing body of any county may, by ordinance, provide an exemption from the tax levied pursuant to this section for food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1.*

C. 1. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

2. Prior to any change in the rate of any local sales and use tax, the Tax Commissioner shall provide remote sellers with at least 30 days' notice. Any change in the rate of any local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to apply the preceding effective rate until 30 days after notification is provided.

D. Any local sales tax levied under this section 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.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payments for the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments

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59 described in this subsection due to the misallocation of funds by the dealer shall be made within three
60 years of the date of the payment error.

61 G. Such payments to counties are subject to the qualification that in any county wherein is situated
62 any incorporated town constituting a special school district and operated as a separate school district
63 under a town school board of three members appointed by the town council, the county treasurer shall
64 pay into the town treasury for general governmental purposes the proper proportionate amount received
65 by him in the ratio that the school age population of such town bears to the school age population of
66 the entire county. If the school age population of any town constituting a separate school district is
67 increased by the annexation of territory since the last estimate of school age population provided by the
68 Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added
69 to the school age population of such town as shown by the last such estimate and a proper reduction
70 made in the school age population of the county or counties from which the annexed territory was
71 acquired.

72 H. One-half of such payments to counties are subject to the further qualification, other than as set
73 out in subsection G, that in any county wherein is situated any incorporated town not constituting a
74 separate special school district that has complied with its charter provisions providing for the election of
75 its council and mayor for a period of at least four years immediately prior to the adoption of the sales
76 tax ordinance, the county treasurer shall pay into the town treasury of each such town for general
77 governmental purposes the proper proportionate amount received by him in the ratio that the school age
78 population of each such town bears to the school age population of the entire county, based on the latest
79 estimate provided by the Weldon Cooper Center for Public Service. The preceding requirement
80 pertaining to the time interval between compliance with election provisions and adoption of the sales tax
81 ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a
82 separate special school district is increased by the annexation of territory or otherwise since the last
83 estimate of school age population provided by the Weldon Cooper Center for Public Service, such
84 increase shall, for the purposes of this section, be added to the school age population of such town as
85 shown by the last such estimate and a proper reduction made in the school age population of the county
86 or counties from which the annexed territory was acquired.

87 I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its
88 discretion, appropriate funds to any incorporated town not constituting a separate school district within
89 such county that has not complied with the provisions of its charter relating to the elections of its
90 council and mayor, an amount not to exceed the amount it would have received from the tax imposed
91 by this chapter if such election had been held; however, Charlotte County, Gloucester County, Halifax
92 County, Henry County, Mecklenburg County, Northampton County, Patrick County, and Pittsylvania
93 County may appropriate any amount to any such incorporated town.

94 J. It is further provided that if any incorporated town which would otherwise be eligible to receive
95 funds from the county treasurer under subsection G or H be located in a county that does not levy a
96 general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at
97 the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions
98 of this section generally applicable to cities and counties. Any tax levied under the authority of this
99 subsection shall in no case continue to be levied on or after the effective date of a county ordinance
100 imposing a general retail sales tax in the county within which such town is located.

101 **§ 58.1-606. To what extent and under what conditions cities and counties may levy local use**
102 **tax; collection thereof by Commonwealth and return of revenues to the cities and counties.**

103 A. 1. The council of any city and the governing body of any county which has levied or may
104 hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate
105 of one percent to provide revenue for the general fund of such city or county. Such tax shall be added
106 to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this
107 chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except
108 that no discount under § 58.1-622 shall be allowed on a local use tax.

109 2. *The council of any city and the governing body of any county may, by ordinance, provide an*
110 *exemption from the tax levied pursuant to this section for food purchased for human consumption and*
111 *essential personal hygiene products, as such terms are defined in § 58.1-611.1.*

112 B. The council of any city and the governing body of any county desiring to impose a local use tax
113 under this section may do so in the manner following:

114 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local
115 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority
116 of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this
117 section, and providing that the local use tax shall become effective on the first day of a month at least
118 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to
119 the Tax Commissioner so that it will be received within five days after its adoption. The resolution
120 authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision

121 of law, including any charter provision.

122 2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use
123 tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections
124 B and C of § 58.1-605.

125 C. Any local use tax levied under this section shall be administered and collected by the Tax
126 Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

127 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax
128 applies, the situs of which for state and local sales tax purposes is the city or county of location of each
129 place of business of every dealer paying the tax to the Commonwealth without regard to the city or
130 county of possible use by the purchasers. However, the local use tax authorized by this section shall
131 apply to tangible personal property purchased without this Commonwealth for use or consumption
132 within the city or county imposing the local use tax, or stored within the city or county for use or
133 consumption, where the property would have been subject to the sales tax if it had been purchased
134 within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal
135 property where the place of business of the lessor is without this Commonwealth and such leases or
136 rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state
137 use tax applies.

138 E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers
139 for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly
140 use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by
141 cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is
142 unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible
143 personal property involved shall be remitted to the Commonwealth by such dealer without attempting to
144 assign the shipment to any city or county.

145 F. Local use tax revenue shall be distributed among the cities and counties for which it is collected,
146 respectively, as shown by the records of the Department, and the procedure shall be the same as that
147 prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is
148 not accurately assignable to a particular city or county shall be distributed monthly by the appropriate
149 state authorities among the cities and counties in this Commonwealth imposing the local use tax upon
150 the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax
151 was in effect in the taxable month involved, as shown by the records of the Department, and computed
152 with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
153 among such cities and counties, respectively, in the month of distribution. Notwithstanding any other
154 provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use
155 tax. Any significant changes to the method of local use tax distribution shall be phased in over a
156 five-year period. Distribution information shall be shared with the affected localities prior to
157 implementation of the changes.

158 G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as
159 provided in § 58.1-605 with respect to local sales tax revenue.