

LD9702416

HOUSE BILL NO. 1798

Offered January 19, 1995

A BILL to amend and reenact §§ 58.1-603, 58.1-604, 58.1-604.1, 58.1-614, 58.1-627, 58.1-628 and 58.1-638 of the Code of Virginia, relating to sales and use tax rate; disposition of sales and use tax revenues; referendum.

Patrons—Putney, Dillard and Rhodes; Senator: Schewel

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603, 58.1-604, 58.1-604.1, 58.1-614, 58.1-627, 58.1-628 and 58.1-638 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-603. Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of ~~three and one-half~~ *four* percent:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services which are expressly stated as taxable within this chapter.

§ 58.1-604. Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of ~~three and one-half~~ *four* percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

§ 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts.

In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in

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constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is ~~three and one-half~~ *four* percent on all tangible personal property except motor vehicles, which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.

For purposes of this section the words "motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, the word "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under §§ 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, or § 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

§ 58.1-614. Vending machine sales.

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on ~~four and one-half~~ *five* percent of such wholesale purchases.

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A of this section.

C. The provisions of subsections A and B of this section shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than ten cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section or § 58.1-628, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each county or city in which he has machines.

§ 58.1-627. Bracket system for tax at rate of four percent.

The ~~following~~ *Department of Taxation shall prepare and distribute tables providing brackets of prices shall to be used for the collection of the tax imposed by this chapter.*

\$0.00	to	\$0.14	no tax
.15	to	.42	1¢ tax
.43	to	.71	2¢ tax
.72	to	.99	3¢ tax
1.00	to	1.28	4¢ tax
1.29	to	1.57	5¢ tax
1.58	to	1.85	6¢ tax
1.86	to	2.14	7¢ tax
2.15	to	2.42	8¢ tax
2.43	to	2.71	9¢ tax
2.72	to	2.99	10¢ tax
3.00	to	3.28	11¢ tax

121	3.29	to	3.57	12¢ tax
122	3.58	to	3.85	13¢ tax
123	3.86	to	4.14	14¢ tax
124	4.15	to	4.42	15¢ tax
125	4.43	to	4.71	16¢ tax
126	4.72	to	5.00	17¢ tax

On transactions over five dollars, the tax shall be computed at three and one-half percent, one-half cent or more being treated as one cent. If a dealer can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ~~ten~~ nine cents or less each, and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at prices of ~~eleven~~ ten cents or more.

§ 58.1-628. Bracket system for combined state and local tax.

The ~~following~~ Department of Taxation shall prepare and distribute tables providing brackets of prices ~~shall~~ to be used for the collection of the combined state and local tax:

138	\$0.00	to	\$0.11	no tax
139	.12	to	.33	1¢ tax
140	.34	to	.55	2¢ tax
141	.56	to	.77	3¢ tax
142	.78	to	.99	4¢ tax
143	1.00	to	1.22	5¢ tax
144	1.23	to	1.44	6¢ tax
145	1.45	to	1.66	7¢ tax
146	1.67	to	1.88	8¢ tax
147	1.89	to	2.11	9¢ tax
148	2.12	to	2.33	10¢ tax
149	2.34	to	2.55	11¢ tax
150	2.56	to	2.77	12¢ tax
151	2.78	to	2.99	13¢ tax
152	3.00	to	3.22	14¢ tax
153	3.23	to	3.44	15¢ tax
154	3.45	to	3.66	16¢ tax
155	3.67	to	3.88	17¢ tax
156	3.89	to	4.11	18¢ tax
157	4.12	to	4.33	19¢ tax
158	4.34	to	4.55	20¢ tax
159	4.56	to	4.77	21¢ tax
160	4.78	to	5.00	22¢ tax

On transactions over five dollars, the tax shall be computed at four and one-half percent, one half cent or more being treated as one cent. The foregoing bracket system shall not relieve the dealer from the duty and liability to remit an amount equal to four and one-half percent of his gross taxable sales as provided in this chapter. If the dealer, however, can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ~~ten~~ nine cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at prices of ~~eleven~~ ten cents or more.

§ 58.1-638. Disposition of state sales and use tax revenue; localities' share.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as hereinafter provided; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as hereinafter provided; and an aggregate of 8.4 percent shall be set aside as the

180 Commonwealth Mass Transit Fund as hereinafter provided. The Fund's share of such net revenue shall
181 be computed as an estimate of the net revenue to be received into the state treasury each month, and
182 such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All
183 payments shall be made to the Fund on the last day of each month.

184 2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
185 be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

186 a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds
187 remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in
188 the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be
189 paid to any authority, locality or commission for the purposes hereinafter specified.

190 b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth
191 Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to
192 support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary
193 ports within the Commonwealth.

194 c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the
195 Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the
196 ports of Virginia, including but not limited to the ports of Richmond, Hopewell and Alexandria.

197 3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
198 be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund.
199 The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds
200 remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in
201 the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be
202 allocated by the Commonwealth Transportation Fund to the Virginia Aviation Board. The funds shall be
203 allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth,
204 a governmental subdivision thereof, a governmental authority created by an interstate compact or by the
205 federal government, or a private entity to which the public has access for the purposes enumerated in
206 § 5.1-2.16 as follows:

207 a. Forty percent of the funds shall be allocated to air carrier airports based upon the percentage of
208 enplanements for each airport to total enplanements at air carrier airports. No air carrier airport,
209 however, shall receive less than \$50,000 nor more than \$2 million per year from this provision;
210 provided, that commencing on July 1, 1991, a maximum of \$1 million shall be allocated each year
211 through June 30, 2021, subject to appropriation by the General Assembly for the benefit of any aircraft
212 hangar, maintenance and operations facilities at Washington Dulles International Airport for payment in
213 whole or in part of obligations incurred pursuant to subdivision 11 of § 33.1-269, and to fund projects
214 as defined in § 33.1-268 (2) (s) and for the payment of debt service for bonds issued by the
215 Commonwealth Transportation Board pursuant to subdivision 4a of § 33.1-269.

216 b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever
217 airports on a discretionary basis; provided, that commencing July 1, 1991, a maximum of \$1 million
218 shall be allocated each year through June 30, 2021, subject to appropriation by the General Assembly
219 for payment in whole or in part of obligations incurred pursuant to subdivision 11 of § 33.1-269 to
220 finance, in part, any aircraft hangar, maintenance and operations facilities, or other improvements at
221 Washington Dulles International Airport, and to fund projects as defined in § 33.1-268 (2) (s) and for
222 the payment of debt service for bonds issued by the Commonwealth Transportation Board pursuant to
223 subdivision 4a of § 33.1-269.

224 c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports
225 on a discretionary basis.

226 4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
227 be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass
228 Transit Fund.

229 a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and
230 any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but
231 shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be
232 paid to any local governing body, transportation district commission or public service corporation for the
233 purposes hereinafter specified.

234 b. The amounts allocated pursuant to this section may be used to support a maximum of fifty percent
235 of the public transportation administrative costs and up to eighty percent of the costs of ridesharing
236 programs borne by the locality. These amounts may be used to support up to ninety-five percent of the
237 local or nonfederal share of capital project costs for public transportation and ridesharing equipment,
238 facilities, and associated costs. Capital costs may include debt service payments on local or agency
239 transit bonds. Further, these amounts may be used to support a maximum of ninety-five percent of the
240 costs borne by the locality for the purchase of fuels, lubricants, tires and maintenance parts and supplies
241 for public transportation. The term "borne by the locality" shall mean the local share eligible for state

assistance consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance received by the locality.

c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth Transportation Board as follows:

1. Funds for special programs, which shall include ridesharing, experimental transit, and technical assistance, shall not exceed 1.5 percent of the Fund.

2. The Board may allocate these funds to any locality or planning district commission to finance up to eighty percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

3. Funds allocated for experimental transit projects may be paid to any local governing body, transportation district commission, or public corporation or may be used directly by the Department of Rail and Public Transportation for the following purposes:

a. To finance up to ninety-five percent of the capital costs related to the development, implementation and promotion of experimental public transportation and ridesharing projects approved by the Board.

b. To finance up to ninety-five percent of the operating costs of experimental mass transportation and ridesharing projects approved by the Board for a period of time not to exceed twelve months.

c. To finance up to ninety-five percent of the cost of the development and implementation of any other project designated by the Board where the purpose of such project is to enhance the provision and use of public transportation services.

d. Funds allocated for public transportation promotion and operation studies may be paid to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

1. At the approval of the Board to finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

2. To finance up to fifty percent of the local share of public transportation operations planning and technical study projects approved by the Board.

e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

f. The remaining twenty-five percent shall be distributed for capital purposes on the basis of ninety-five percent of the nonfederal share for federal projects and ninety-five percent of the total costs for nonfederal projects. In the event that total capital funds available under this paragraph are insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit property in the same proportion that such capital expenditure bears to the statewide total of capital projects.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

a. Local payments of WMATA rail transit bonds shall be paid first and apportioned to each locality using the WMATA capital formula.

b. The remaining funds shall be apportioned by calculating twenty-five percent of the capital and operating costs and seventy-five percent of the capital and operating subsidies applied to each locality. Capital costs may include twenty percent of annual local bus capital expenses.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

6. *The sales and use tax revenue generated by the one-half cent sales and use tax increase enacted by the 1995 Session of the General Assembly shall be used to provide funds to pay for prison construction due to the abolition of parole and the reform of Virginia's sentencing laws as enacted by the 1994 Special Session II of the Virginia General Assembly.*

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of this Commonwealth in the manner hereafter in this section provided.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis as certified to the Comptroller by the Department of Education, of the number of children in each county and city according to the most recent statewide census of school population taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter provided. No special school population census, other than a statewide census, shall be used as the basis of apportionment and distribution except that in any calendar year in which a statewide census is not reported, the Department of Education shall adjust such school population figures by the same percent of annual change in total population estimated for each locality by the ~~Tayloe Murphy Institute~~ *Center for Public Service*. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last preceding school population census, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such census and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

F. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

2. That the first enactment of this act shall become effective only if approved by a majority of those voting in a referendum to be conducted at the general election in November 1995 as follows:

It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 1995, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon their approval of this act as provided herein. Notice of the election shall be published at least twice, the first publication being at least forty-five days before the election, in such newspapers designated by the State Board of Elections which collectively shall circulate throughout the Commonwealth. The voting machines and ballots to be used at the election shall pose the question in substantially the following form:

QUESTION: Shall there be a one-half cent increase in the sales and use tax, effective from July 1, 1996, through December 31, 1999, with the revenues from such increase being used exclusively for state prison construction, as provided by Chapter __, Acts of Assembly of 1995?

The ballots shall be prepared, distributed and voted, and the results thereof ascertained and certified, in the manner prescribed by Title 24.2 of the Code of Virginia. The State Board of Elections shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of this act and the question contained herein for the officers of election to post in each polling place on election day. The electoral board of such county and city shall make out, certify and forward an abstract of the votes cast for and against this act in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvas such abstracts and examine and report the whole number of votes cast at the election for and against this act in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office and without delay make out and transmit to the Governor an official copy of such report, certified by it.

The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against such proposition.

The expenses incurred in conducting this election shall be defrayed as in the case of the election of members of the General Assembly.

3. That the provisions of the first enactment of this act shall be effective from July 1, 1996, through June 30, 1999, if approved by a majority of the voters at the 1995 general election in November 1995.