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SENATE BILL NO. 426

Offered January 25, 1994

A BILL to amend and reenact § 58.1-3703 of the Code of Virginia, relating to limitation of authority for BPOL taxes.

Patron—Benedetti

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-3703 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3703. Counties, cities and towns may impose local license taxes; limitation of authority.

A. The governing body of any county, city or town may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations provided in subsection B of this section.

B. No county, city, or town shall levy any license tax:

1. On any public service corporation except as provided in § 58.1-3731 or as permitted by other provisions of law;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town; provided, such products are grown or produced by the person offering such products for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

8. Upon a wholesaler or retailer for the privilege of selling bicentennial medals on a nonprofit basis for the benefit of the Virginia Independence Bicentennial Commission or any local bicentennial commission;

9. On or measured by receipts for management, accounting, or administrative services provided on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Chapter 3, Article 2 (§ 13.1-312 et seq.), Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by a corporation which is a member of an affiliated group of corporations from other members of the same affiliated group. This exclusion shall not exempt affiliated corporations from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated corporation on those sales by the affiliated corporation to a nonaffiliated person, company, or corporation, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated corporation. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated person, company, or corporation. As used in this subdivision the term "sales by the affiliated corporation to a nonaffiliated person, company or corporation" shall

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mean sales by the affiliated corporation to a nonaffiliated person, company or corporation where goods sold by the affiliated corporation or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated person, company or corporation.

For purposes of this exclusion, the term "affiliated group" means

(a) One or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if:

(i) Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the includible corporations, except the common parent corporation, is owned directly by one or more of the other includible corporations; and

(ii) The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other includible corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includible corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

(b) Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

(i) At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and

(ii) More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the includible corporations, including the common parent corporation is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped, or a nominee of the Department, as set forth in § 63.1-164;

15. (Expires July 1, 1997) On any hospital, college, university, or other institution of learning not organized or conducted for pecuniary profit which by reason of its purposes or activities is exempt from income tax under the laws of the United States unless such tax was enacted by the local governing body prior to January 15, 1991. The provisions of this subdivision shall expire on July 1, 1997;

16. Upon any person who is authorized to celebrate the rites of marriage under §§ 20-23 and 20-25 and any person who is authorized to solemnize a marriage under § 20-26 provided such gross annual receipts total no more than \$500; or

17. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination; or

18. Upon an agent for a manufacturer or wholesaler engaged in the business of selling goods, wares and merchandise on commission by sample, circular or catalogue, to persons for resale, who has no stock or inventory under his control other than samples for demonstration and does not invoice or collect moneys from such other persons.