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## SENATE BILL NO. 126

Offered January 10, 1996

*A BILL to amend and reenact §§ 58.1-605, 58.1-606, 58.1-614, 58.1-628, 58.1-3001, and 58.1-3005 of the Code of Virginia, relating to local sales and use tax rate; rate of tangible personal property tax.*

Patrons—Colgan; Delegate: Parrish

Referred to the Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-605, 58.1-606, 58.1-614, 58.1-628, 58.1-3001, and 58.1-3005 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.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of ~~one~~ two and one-half 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. The applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local tax. No discount under § 58.1-622 shall be allowed on a local sales tax.

C. 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 sixty 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.

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, with the adjustments required by § 58.1-628.

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 payment for the next month or for subsequent months.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last preceding school age population census, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

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SB126

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

I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

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

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

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of ~~one~~ *two and one-half* percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that the applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local tax, and except that no discount under § 58.1-622 shall be allowed on a local use tax.

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

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

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

C. Any local use 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 use tax, with the adjustments required by § 58.1-628.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is 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. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state

use tax applies.

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

F. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution.

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

§ 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~~ six 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 two and one-half~~ 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.

§ 58.1-628. 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:

\$0.00 to \$0.11 no tax

.12 to .33 1&raquo; tax

.34 to .55 2&raquo; tax

.56 to .77 3&raquo; tax

.78 to .99 4&raquo; tax

1.00 to 1.22 5&raquo; tax

1.23 to 1.44 6&raquo; tax

1.45 to 1.66 7&raquo; tax

1.67 to 1.88 8&raquo; tax

1.89 to 2.11 9&raquo; tax

2.12 to 2.33 10&raquo; tax

2.34 to 2.55 11&raquo; tax

2.56 to 2.77 12&raquo; tax

2.78 to 2.99 13&raquo; tax

3.00 to 3.22 14&raquo; tax

3.23 to 3.44 15&raquo; tax

3.45 to 3.66 16&raquo; tax

183 3.67 to 3.88 17&raquo; tax  
 184 3.89 to 4.11 18&raquo; tax  
 185 4.12 to 4.33 19&raquo; tax  
 186 4.34 to 4.55 20&raquo; tax  
 187 4.56 to 4.77 21&raquo; tax  
 188 4.78 to 5.00 22&raquo; tax

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

198 § 58.1-3001. When boards of supervisors to fix and order county and district taxes; application of  
 199 certain local sales and use tax revenues; funds not available, allocated, etc., until appropriated.

200 A. The governing body of each county shall, at its regular meeting in the month of January in each  
 201 year, or as soon thereafter as practicable not later than a regular or called meeting in June, fix the  
 202 amount of the county and district taxes for the current year. Any such governing body may provide that  
 203 if any taxpayer owns tangible personal property of such small value that the local levies thereon for the  
 204 year result in a tax of less than fifteen dollars, such tax may be collected as provided by ordinance or  
 205 such property may be omitted from the personal property book and no assessment made thereon.

206 B. *If a county levies a local sales tax or use tax, or both, under the provisions of §§ 58.1-605 or*  
 207 *58.1-606, or both, the increase in local sales and use tax revenue paid to each county resulting from the*  
 208 *implementation of the one and one-half percent local sales and use tax increase shall be applied to*  
 209 *reduce the rate of the county's tangible personal property tax as follows:*

210 1. *As used in this subsection, the "increase in local sales and use tax revenue paid to each county*  
 211 *resulting from the implementation of the one and one-half percent local sales and use tax increase"*  
 212 *means the amount by which payments to the county pursuant to subsection F of § 58.1-605 and*  
 213 *subsection F of § 58.1-606, less any payments made by the county treasurer into the treasury of any*  
 214 *incorporated town situated within the county as provided in subsections G, H, and I of § 58.1-605, made*  
 215 *during a year following the implementation of the one and one-half percent local sales and use tax*  
 216 *increase authorized by the 1996 Session of the General Assembly, exceed the amount of such payments*  
 217 *to the county during the last fiscal year preceding the increase in the local sales and use tax.*

218 2. *Annually until the rate of tangible personal property tax on every classification of tangible*  
 219 *personal property is lowered to a rate not exceeding one cent per one hundred dollars of assessed*  
 220 *value, the governing body of the county shall reduce the rate of its tangible personal property tax to a*  
 221 *rate that is expected to generate revenues from its tangible personal property tax in the current year*  
 222 *which, when such revenues are added to the increase in local sales and use tax revenue paid to each*  
 223 *county resulting from the implementation of the one and one-half percent local sales and use tax*  
 224 *increase, will equal the revenues from its tangible personal property tax collected in the last fiscal year*  
 225 *preceding the increase in the local sales and use tax.*

226 3. *If a county taxes separate classifications of tangible personal property at different rates in excess*  
 227 *of one cent per one hundred dollars of assessed value, the governing body shall reduce every rate that*  
 228 *exceeds such limit by equal percentages in the same year until every rate is reduced to a rate not*  
 229 *exceeding one cent per one hundred dollars of assessed value.*

230 4. *Following the reduction of the rate of taxation of any classification of tangible personal property*  
 231 *pursuant to this subsection, the governing body of a county shall not thereafter increase the rate of*  
 232 *taxation on any classification of tangible personal property.*

233 5. *Following the implementation of the one and one-half percent local sales and use tax increase*  
 234 *authorized by the 1996 Session of the General Assembly, the governing body of a county shall not*  
 235 *change its method of assessment of separate classifications of tangible personal property, or change the*  
 236 *assessment ratio, in a manner that increases the county's revenue from taxation of a separate*  
 237 *classification of tangible personal property.*

238 C. The imposition of taxes or the collection of such taxes shall not constitute an appropriation nor an  
 239 obligation or duty to appropriate any funds for any purpose, expenditure or contemplated expenditure.  
 240 No part of the funds raised by the general county taxes shall be considered available, allocated or  
 241 expended for any purpose until there has been an appropriation of funds for that expenditure or purpose  
 242 by the governing body either annually, semiannually, quarterly, or monthly. There shall be no mandatory  
 243 duty upon the governing body of any county to appropriate any funds raised by general county taxes  
 244 except to pay the principal and interest on bonds and other legal obligations of the county or district and

to pay obligations of the county or its agencies and departments arising under contracts executed or approved by the governing body, unless otherwise specifically provided by statute. Any funds collected and not expended in any fiscal year shall be carried over to the succeeding fiscal years and shall be available for appropriation for any governmental purposes in those years.

§ 58.1-3005. Cities and towns to make city and town levies; application of certain local sales and use tax revenues; funds not available, allocated, etc., until appropriated.

A. The council of every city and town shall annually cause to be made up and entered on its journals an account of all sums lawfully chargeable on the city or town which ought to be paid within one year and order the imposition of taxes in such amount as in their opinion is necessary to be raised. Any such governing body may provide that if any taxpayer owns tangible personal property of such small value that the local levies thereon for the year result in a tax of less than fifteen dollars, such tax may be collected as provided by ordinance or such property may be omitted from the personal property book and no assessment made thereon.

B. If a city levies a local sales tax or use tax, or both, under the provisions of §§ 58.1-605 or 58.1-606, or both, or if an incorporated town (i) levies a local sales tax as authorized by subsection J of § 58.1-605 or (ii) receives payments from the county within which the town is situated as provided in subsections G, H, and I of § 58.1-605, the increase in local sales and use tax revenue paid to the city or town resulting from the implementation of the one and one-half percent local sales and use tax increase shall be applied to reduce the rate of the tangible personal property tax levied in the city or town as follows:

1. As used in this subsection, the "increase in local sales and use tax revenue paid to the city or town resulting from the implementation of the one and one-half percent local sales and use tax increase" means the amount by which payments to (i) a city pursuant to subsection F of § 58.1-605 and subsection F of § 58.1-606, (ii) a town levying a local sales tax pursuant to subsection J of § 58.1-605, or (iii) a town by the county in which the town is situated as provided in subsections G, H, and I of § 58.1-605, made during a year following the implementation of the one and one-half percent local sales and use tax increase authorized by the 1996 Session of the General Assembly, exceed the amount of such payments to the city or town during the last fiscal year preceding the increase in the local sales and use tax.

2. Annually until the rate of tangible personal property tax on every classification of tangible personal property is lowered to a rate not exceeding one cent per one hundred dollars of assessed value, the council of the city or town shall reduce the rate of its tangible personal property tax to a rate that is expected to generate revenues from its tangible personal property tax in the current year which, when such revenues are added to the increase in local sales and use tax revenue paid to the city or town resulting from the implementation of the one and one-half percent local sales and use tax increase, will equal the revenues from its tangible personal property tax collected in the last fiscal year preceding the increase in the local sales and use tax.

3. If a city or town taxes separate classifications of tangible personal property at different rates in excess of one cent per one hundred dollars of assessed value, the council of the city or town shall reduce every rate that exceeds such limit by equal percentages in the same year until every rate is reduced to a rate not exceeding one cent per one hundred dollars of assessed value.

4. Following the reduction of the rate of taxation of any classification of tangible personal property pursuant to this subsection, the council of the city or town shall not thereafter increase the rate of taxation on any classification of tangible personal property.

5. Following the implementation of the one and one-half percent local sales and use tax increase authorized by the 1996 Session of the General Assembly, the council of the city or town shall not change its method of assessment of separate classifications of tangible personal property, or change the assessment ratio, in a manner that increases the revenue received by the city or town from taxation of a separate classification of tangible personal property.

C. The imposition of taxes or the collection of such taxes shall not constitute an appropriation nor an obligation or duty to appropriate any funds by the council of any city or town for any purpose, expenditure, or contemplated expenditure. No part of the funds raised by the general city or town taxes shall be considered available, allocated, or expended for any purpose until there has been an appropriation of funds for that expenditure or purpose by the council either annually, semiannually, quarterly, or monthly. There shall be no mandatory duty upon the council of any city or town to appropriate any funds raised by general city or town taxes except to pay the principal and interest on bonds and other legal obligations of the city or town and to pay obligations of the city or town or its agencies and departments arising under contracts executed or approved by the council, unless otherwise specifically provided by statute. Any funds collected and not expended in any fiscal year shall be carried over to the succeeding fiscal years and shall be available for appropriation for any governmental purposes in those years. This section shall be applicable to all cities and towns in the Commonwealth

306 and the provisions of any charter of any city or town inconsistent or in conflict with this section shall  
307 be inoperative to the extent of such inconsistency or conflict.  
308 **2. That the provisions of this act shall become effective on January 1, 1997.**