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SENATE BILL NO. 202

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 31, 1996)

(Patron Prior to Substitute—Senator Hawkins)

A BILL to amend and reenact §§ 30-19.05 and 30-19.1:3 of the Code of Virginia, relating to legislative consideration of exemptions from the retail sales and use tax.

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-19.05 and 30-19.1:3 of the Code of Virginia are amended and reenacted as follows:

§ 30-19.05. Legislative consideration of exemptions from the retail sales and use tax.

A. When any legislation involving an exemption or exclusion from the retail sales and use tax pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 is expected to be submitted to the General Assembly during its next regular session *convened in an even-numbered year*, the patron shall submit to the Department of Taxation by November 1 the following information:

1. Estimate of state and local revenues which will be foregone as a direct result of the exemption;
2. Beneficiaries of the exemption;
3. Direct or indirect local, state or federal government assistance received by the person seeking exemption;
4. The extent to which the person, property, service or industry is exempt from the retail sales and use tax in other states;

5. Any external statutory, constitutional or judicial mandates in favor of the exemption;

6. Other state taxes to which the person, property, service or industry is subject;

7. Similar taxpayers who are not entitled to a retail sales and use tax exemption; and

8. Other criteria, facts or circumstances which may be relevant to the request for exemption.

B. In addition, organizations seeking an exemption under the categories of educational (§ 58.1-609.4), medical-related (§ 58.1-609.7), civic and community service (§ 58.1-609.8), and cultural (§ 58.1-609.9) shall submit the following information:

1. Exemption from federal income taxation under either § 501 (c) (3) or § 501 (c) (4) of the Internal Revenue Code, as evidenced by a ruling or other such documentation;

2. The charitable purpose or purposes for which the entity is organized and operated, and the charitable functions and services it exists to deliver, provided to Virginia citizens, along with an explanation of such services;

3. Proof that no more than one-third of the organization's gross annual revenue, under generally accepted accounting principles, is spent on general administration and fundraising;

4. The location of the organization's financial records available for public inspection and certification that such records are true, accurate, and complete. Salaries, including all benefits, of the five most highly compensated employees shall be specifically disclosed. Organizations whose gross annual revenue is \$250,000 or greater shall be subject to an annual financial audit performed by an independent certified public accountant. Such audit report or reports shall be attached to the organization's application for tax exempt status;

5. Proof of compliance with Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia from organizations subject to it;

6. A volunteer board of directors with names and addresses provided.

Unless the General Assembly has enacted an exemption category or classification without regard to an organization's compliance with the above six items, requirements of item 3 constitute a continuing obligation and condition for maintaining tax exempt status, and the failure to do so may constitute grounds for the revocation of such status. Under circumstances evidencing a willful disregard or misuse of such tax exempt status, revocation back to the date of noncompliance, subject to the applicable statute of limitations, may be the appropriate sanction. No such retroactive revocation shall be implemented unless the Tax Commissioner has first utilized the procedure prescribed in § 58.1-623.1 A.

The Department of Taxation shall issue a preliminary determination, by January 5 prior to the regular session *convened in an even-numbered year* in which the exemption is sought, that the organization has furnished all of the information required by this section. If such information is incomplete, the Department shall explain the nature of the deficiencies.

C. Nothing contained in subsection A shall prevent the enactment of an exemption without receipt of the required information when the legislation is specifically requested by the Governor, or is otherwise considered to be of such a nature that the chairman of the committee determines that the information is not required.

D. The Secretary of Finance shall investigate and analyze the fiscal, economic and policy impact of

each exemption category set out in §§ ~~58.1-609.1~~ through ~~58.1-609.10~~. The Secretary shall report the findings to the House and Senate Finance Committees each year by December 1, and shall report on two exemption categories each year and every five years thereafter, beginning with the 1990 Session of the General Assembly according to the following schedule:

Category	Year
§ 58.1-609.1. Government and Commodities	1990
§ 58.1-609.2. Agricultural	1990
§ 58.1-609.3. Commercial and Industrial	1991
§ 58.1-609.4. Educational	1991
§ 58.1-609.5. Services	1992
§ 58.1-609.6. Media-Related	1992
§ 58.1-609.7. Medical-Related	1993
§ 58.1-609.8. Civic and Community Service	1993
§ 58.1-609.9. Cultural	1994
§ 58.1-609.10. Miscellaneous	1994

No exemption category shall be studied under the provisions of this subsection more frequently than once every five years. The information required in subsections A and B shall be updated and submitted to the Department of Taxation by the organizations being studied every five years. Such information shall be due by July 1 prior to the December 1 deadline when the Secretary reports his findings to the House and Senate Finance Committees.

E. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

§ 30-19.1:3. Limiting time for introduction and consideration of retail sales and use tax exemption bills.

A. Any bill providing for a new retail sales and use tax exemption shall be introduced for consideration by the General Assembly no later than the first calendar day of any *regular* session of the General Assembly *convened in an even-numbered year*, unless requested by the Governor. Any bill extending the expiration date or delaying the effective date of any exemption shall not be covered by this subsection.

B. No bill providing for a retail sales and use tax exemption shall be drafted or otherwise prepared by the Division of Legislative Services unless the drafting request is accompanied by the Department of Taxation's preliminary determination as provided by subsection B of § 30-19.05.

C. *Any bill providing for a retail sales and use tax exemption shall be considered by the General Assembly only in regular sessions convened in even-numbered years.*