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HOUSE BILL NO. 731

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance)

(Patron Prior to Substitute—Delegate Johnson)

House Amendments in [] — February 15, 1998

A BILL to amend and reenact §§ 46.2-752 and 58.1-3916 of the Code of Virginia, relating to issuance of local vehicle licenses and provisions of local ordinances relating to collection of tangible personal property tax; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-752 and 58.1-3916 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-752. Taxes and license fees imposed by counties, cities, and towns; limitations on amounts; disposition of revenues; requiring evidence of payment of personal property taxes; prohibiting display of licenses after expiration; failure to display valid local license required by other localities.

A. Except as provided in § 46.2-755, counties, cities, and towns may levy and assess taxes and charge license fees on motor vehicles, trailers, and semitrailers. However, none of these taxes and license fees shall be assessed or charged by any county on vehicles owned by residents of any town located in the county when such town constitutes a separate school district if the vehicles are already subject to town license fees and taxes. The amount of the license fee or tax imposed by any county, city, or town on any motor vehicle, trailer, or semitrailer shall not be greater than the amount of the license tax imposed by the Commonwealth on the motor vehicle, trailer, or semitrailer. The license fees and taxes shall be imposed in such manner, on such basis, for such periods, and subject to proration for fractional periods of years, as the proper local authorities may determine. Local licenses may be issued free of charge for any or all of the following:

1. Vehicles powered by clean special fuels as defined in § 58.1-2101, including dual-fuel and bi-fuel vehicles,

2. Vehicles owned by volunteer rescue squads,

3. Vehicles owned by volunteer fire departments,

4. Vehicles owned or leased by active members of volunteer rescue squads,

5. Vehicles owned or leased by active members of volunteer fire departments,

6. Vehicles owned or leased by auxiliary police officers,

7. Vehicles owned or leased by volunteer police chaplains,

8. Vehicles owned by surviving spouses of persons qualified to receive special license plates under § 46.2-739,

9. Vehicles owned or leased by auxiliary deputy sheriffs,

10. Vehicles owned by persons qualified to receive special license plates under § 46.2-739,

11. Vehicles owned by any of the following who served at least ten years in the locality: former members of volunteer rescue squads, former members of volunteer fire departments, former auxiliary police officers, former volunteer police chaplains, and former volunteer special police officers appointed under § 15.1-144 15.2-1737. In the case of active members of volunteer rescue squads and volunteer fire departments, applications for such licenses shall be accompanied by written evidence, in a form acceptable to the locality, of their active membership, and no member shall be issued more than one such license free of charge, or

12. All vehicles having a situs for the imposition of licensing fees under this section in the locality.

The governing body of any county, city, or town issuing licenses free of charge under this subsection may by ordinance provide for (i) the limitation, restriction, or denial of such free issuance to an otherwise qualified applicant, *including without limitation the denial of free issuance to a taxpayer who has failed to timely pay personal property taxes due with respect to the vehicle*, and (ii) the grounds for such limitation, restriction, or denial.

The situs for the imposition of licensing fees under this section shall in all cases, except as hereinafter provided, be the county, city, or town in which the motor vehicle, trailer, or semitrailer is normally garaged, stored, or parked. If it cannot be determined where the personal property is normally garaged, stored, or parked, the situs shall be the domicile of its owner. In the event the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile.

B. The revenue derived from all county, city, or town taxes and license fees imposed on motor vehicles, trailers, or semitrailers shall be applied to general county, city, or town purposes.

C. A county, city, or town may require that no motor vehicle, trailer, or semitrailer shall be locally licensed until the applicant has produced satisfactory evidence that all personal property taxes on the

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60 motor vehicle, trailer, or semitrailer to be licensed have been paid and satisfactory evidence that any
61 delinquent motor vehicle, trailer, or semitrailer personal property taxes owing have been paid which
62 have been properly assessed or are assessable against the applicant by the county, city, or town. A
63 county, city, or town may also provide that no motor vehicle license shall be issued unless the tangible
64 personal property taxes properly assessed or assessable by that locality on any tangible personal property
65 used or usable as a dwelling titled by the Department of Motor Vehicles and owned by the taxpayer
66 have been paid. Any county and any town within any such county may by agreement require that all
67 personal property taxes assessed by either the county or the town on any vehicle be paid before
68 licensure of such vehicle by either the county or the town.

69 C1. Any county having a population of at least 24,000, but no more than 24,600, may, by ordinance
70 or resolution adopted after public notice and hearing and, ~~in the case of a county,~~ with the consent of
71 the treasurer, require that no license may be issued under this section unless the applicant has produced
72 satisfactory evidence that all fees, including delinquent fees, payable to such county or local solid waste
73 authority, for the disposal of solid waste pursuant to the Virginia Water and ~~Sewer~~ Waste Authorities
74 Act (§ ~~45.1-1239~~ 15.2-5100 et seq.), have been paid in full. For purposes of this subsection, all fees,
75 including delinquent fees, payable to a county for waste disposal services described herein, shall be paid
76 to the treasurer of such county.

77 D. The Counties of Arlington, Fairfax, Loudoun, and Prince William and towns within them and any
78 city may require that no motor vehicle, trailer, or semitrailer shall be licensed by that jurisdiction unless
79 all fines owed to the jurisdiction by the owner of the vehicle, trailer, or semitrailer for violation of the
80 jurisdiction's ordinances governing parking of vehicles have been paid. The provisions of this subsection
81 shall not apply to vehicles owned by firms or companies in the business of renting motor vehicles.

82 E. If in any county imposing license fees and taxes under this section, a town therein imposes like
83 fees and taxes on vehicles of owners resident in the town, the owner of any vehicle subject to the fees
84 or taxes shall be entitled, on the owner's displaying evidence that he has paid the fees or taxes, to
85 receive a credit on the fees or taxes imposed by the county to the extent of the fees or taxes he has paid
86 to the town. Nothing in this section shall deprive any town now imposing these licenses and taxes from
87 increasing them or deprive any town not now imposing them from hereafter doing so, but subject to the
88 limitations provided in subsection D of this section. The governing body of any county and the
89 governing body of any town in that county wherein each imposes the license tax herein provided may
90 provide mutual agreements so that not more than one license plate or decal in addition to the state plate
91 shall be required.

92 F. Notwithstanding the provisions of subsection E of this section, in a consolidated county wherein a
93 tier-city exists, the tier-city may, in accordance with the provisions of the agreement or plan of
94 consolidation, impose license fees and taxes under this section in addition to those fees and taxes
95 imposed by the county, provided that the combined county and tier-city rates do not exceed the
96 maximum provided in subsection A of this section. No credit shall be allowed on the fees or taxes
97 imposed by the county for fees or taxes paid to the tier-city, except as may be provided by the
98 consolidation agreement or plan. The governing body of any county and the governing body of any
99 tier-city in said county wherein each imposes the license tax herein may provide by mutual agreement
100 that no more than one license plate or decal in addition to the state license plate shall be required.

101 G. Any county, city, or town may by ordinance provide that it shall be unlawful for any owner or
102 operator of a motor vehicle, trailer, or semitrailer to fail to obtain and display the local license required
103 by any ordinance of the county, city or town in which the vehicle is registered or to display upon a
104 motor vehicle, trailer, or semitrailer any such local license after its expiration date. The ordinance may
105 provide that a violation shall constitute a misdemeanor the penalty for which shall not exceed that of a
106 Class 4 misdemeanor and may, in the case of a motor vehicle registered to a resident of the locality
107 where such vehicle is registered, authorize the issuance by local law-enforcement officers of citations,
108 summonses, parking tickets, or uniform traffic summonses for violations. Any such ordinance may also
109 provide that a violation of the ordinance by the registered owner of the vehicle may not be discharged
110 by payment of a fine except upon presentation of satisfactory evidence that the required license has been
111 obtained.

112 H. Except as provided by subsections E and F, no vehicle shall be subject to taxation under the
113 provisions of this section in more than one jurisdiction.

114 I. Purchasers of new or used motor vehicles shall be allowed at least a ten-day grace period,
115 beginning with the date of purchase, during which to pay license fees charged by local governments
116 under authority of this section.

117 J. Beginning October 1, 1992, the treasurer or director of finance of any county, city, or town may
118 enter into an agreement with the Commissioner whereby the Commissioner will refuse to issue or renew
119 any vehicle registration of any applicant therefor who owes to such county, city or town any delinquent
120 tangible personal property tax levied with respect to such vehicle in excess of \$50. Before being issued
121 any vehicle registration or renewal of such license or registration by the Commissioner, the applicant

must first satisfy all such delinquent taxes and present evidence satisfactory to the Commissioner that all such delinquent taxes have been paid in full. The Commissioner shall charge a reasonable fee to cover the costs of such enforcement action, and the treasurer or director of finance may add the cost of this fee to the delinquent tax bill. The treasurer or director of finance of any county, city, or town seeking to collect delinquent taxes through the withholding of registration or renewal thereof by the Commissioner as provided for in this subsection shall notify the Commissioner in the manner provided for in his agreement with the Commissioner and supply to the Commissioner information necessary to identify the debtor whose registration or renewal is to be denied. Any agreement entered into pursuant to the provisions of this subsection shall provide the debtor notice of the intent to deny renewal of registration at least thirty days prior to the expiration date of a current vehicle registration. For the purposes of this subsection, notice by first-class mail to the registrant's address as maintained in the records of the Department of Motor Vehicles shall be deemed sufficient.

K. The governing bodies of any two or more counties, cities, or towns may enter into compacts for the regional enforcement of local motor vehicle license requirements. The governing body of each participating jurisdiction may by ordinance require the owner or operator of any motor vehicle, trailer, or semitrailer to display on his vehicle a valid local license issued by another county, city, or town that is a party to the regional compact, provided that the owner or operator is required by the jurisdiction of situs, as provided in § 58.1-3511, to obtain and display such license. The ordinance may provide that a violation shall constitute a misdemeanor the penalty for which shall not exceed that of a Class 4 misdemeanor. Any such ordinance may also provide that a violation of the ordinance by the owner of the vehicle may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required license has been obtained.

§ 58.1-3916. Counties, cities and towns may provide dates for filing returns, set penalties, interest, etc.

Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915 and 58.1-3918, the governing body of any county, city or town may provide by ordinance the time for filing local license applications and annual returns of taxable tangible personal property, machinery and tools and merchants' capital. The governing body may also by ordinance establish due dates for the payment of local taxes; may provide that payment be made in a single installment or in two equal installments for real estate, local license, machinery and tools and merchants' capital; may offer options, which may include coupon books and payroll deductions, which allow the taxpayer to determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees actually contracted for, not to exceed twenty percent of the delinquent taxes and other charges so collected.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within ninety days of the date of the assessment, and for thirty days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed ten percent per year. The governing body may impose interest at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, or ten percent annually, whichever is greater, for the second and subsequent years of delinquency. No penalty for failure to pay a tax or installment shall exceed (i) ten percent of the tax past due on such property or, (ii) [*in the case of delinquent tangible personal property tax more than thirty days past due on property classified pursuant to subdivision A 13, A 14 or A 18 of § 58.1-3506, which remains unpaid after ten days' written notice sent by United States mail to the taxpayer of the intention to impose a penalty pursuant hereto, the penalty shall not exceed an amount equal to the difference between the tax due and owing with respect to such property and the tax that would have been due and owing if the property in question had been classified as general tangible personal property pursuant to § 58.1-3503, (iii)] in the case of delinquent tangible personal property tax more than ~~30~~ thirty days past due, twenty-five percent of the tax past due on such tangible personal property, ~~or in any case, the sum of ten dollars, whichever is the greater; provided, however, that the penalty shall in no case exceed the amount of tax due [unless such property is classified pursuant to subdivision A 13, A 14 or A 18 of § 58.1-3506, in which case the penalty shall not exceed an amount~~*

183 *equal to the difference between the tax due and owing with respect to such property, and the tax that*
184 *would have been due and owing if the property in question had been classified as general tangible*
185 *personal property pursuant to § 58.1-3503, or (iii) , or (iv)] ten dollars, whichever is greater. No*
186 *penalty for failure to file a return shall be greater than ten percent of the tax assessable on such return*
187 *or ten dollars, whichever is greater; provided, however, that the penalty shall in no case exceed the*
188 *amount of the tax assessable. The assessment of such penalty shall not be deemed a defense to any*
189 *criminal prosecution for failing to make return of taxable property as may be required by law or*
190 *ordinance. Penalty for failure to file an application or return may be assessed on the day after such*
191 *return or application is due; penalty for failure to pay any tax may be assessed on the day after the first*
192 *installment is due. Any such penalty when so assessed shall become a part of the tax.*

193 No penalty for failure to pay any tax shall be imposed for any assessment made later than two weeks
194 prior to the day on which the taxes are due, if such assessment is made thereafter through the fault of a
195 local official, and if such assessment is paid within two weeks after the notice thereof is mailed.

196 In the event a transfer of real property ownership occurs after January 1 of a tax year and a real
197 estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other
198 appropriate local official designated by ordinance of the local governing body in jurisdictions not having
199 a treasurer, upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior
200 owner and reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to
201 pay any tax for any such assessment shall be imposed if the tax is paid within two weeks after the
202 notice thereof is mailed.

203 Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure
204 was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as
205 the case may be. The failure to file a return or to pay a tax due to a medically determinable physical or
206 mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the
207 taxpayer's part, provided the return is filed or the taxes are paid within thirty days of the due date;
208 however, this provision shall not apply if there is a committee, legal guardian or other fiduciary
209 handling the individual's affairs. The treasurer shall make determinations of fault relating exclusively to
210 failure to pay a tax, and the commissioner of the revenue shall make determinations of fault relating
211 exclusively to failure to file a return. In jurisdictions not having a treasurer or commissioner of the
212 revenue, the governing body may delegate to the appropriate local tax officials the responsibility to
213 make the determination of fault.

214 The governing body may further provide for reasonable extensions of time, not to exceed ninety
215 days, for the payment of real estate taxes and for filing returns on tangible personal property, machinery
216 and tools and merchants' capital, and the business, professional, and occupational license tax, whenever
217 good cause exists. The official granting such extension shall keep a record of every such extension. If
218 any taxpayer who has been granted an extension of time for filing his return fails to file his return
219 within the extended time, his case shall be treated the same as if no extension had been granted.

220 This section shall be the sole authority for local ordinances setting due dates of local taxes and
221 penalty and interest thereon, and shall supersede the provisions of any charter or special act.