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HOUSE BILL NO. 1948

Offered January 18, 1999

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

Patrons—DeBoer, Almand, Drake, Howell, Johnson, Melvin, Orrock, Puller, Purkey, Reid and Rust

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 30-19.05 of the Code of Virginia is 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, *nonprofit* 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), and *miscellaneous* (§ 58.1-609.10) 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 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 items 1 and 3 constitute a continuing obligation and condition for maintaining tax exempt status for sales and use tax purposes, 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 subsection A of § 58.1-623.1.

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.

On and after July 1, 2000, any organization exempt from taxation under §§ 501 (c) (3) or 501 (c) (4) of the Internal Revenue Code, except for nonprofit churches, which qualifies for a sales and use tax exemption under §§ 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9 or 58.1-609.10, shall submit the

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60 *information set forth in this subsection and update such information as required hereinafter. The initial*
61 *submission shall be made to the Department no later than July 1, 2000, with the updates filed in*
62 *accordance with the following schedule: (i) § 58.1-609.4 organizations file by July 1, 2002; (ii)*
63 *§ 58.1-609.7 organizations file by July 1, 2003; (iii) first half of § 58.1-609.8 organizations file by July*
64 *1, 2004; (iv) second half of § 58.1-609.8 organizations file by July 1, 2005; and (v) §§ 58.1-609 and*
65 *58.1-609.10 organizations file by July 1, 2006. Each organization shall update the information every*
66 *five years after this initial update. Failure to make a complete and timely submission of the required*
67 *information shall result in the loss of the sales and use tax exemption for the organization.*

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

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