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HOUSE BILL NO. 5010

Offered April 5, 2004

A BILL to amend and reenact §§ 58.1-603, 58.1-604, 58.1-605, 58.1-606, 58.1-611.1, 58.1-627, and 58.1-628 of the Code of Virginia, relating to increases in the state and local sales and use tax.

Patron—Shuler

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-603, 58.1-604, 58.1-605, 58.1-606, 58.1-611.1, 58.1-627, and 58.1-628 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-603. Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of ~~three and one-half~~ *four* percent:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services ~~which~~ *that* are expressly stated as taxable within this chapter.

§ 58.1-604. Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of ~~three and one-half~~ *four* percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

5. The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less during any calendar year.

§ 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.

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59 B. 1. The council of any city and the governing body of any county may levy a general retail sales
60 tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax
61 shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be
62 subject to all the provisions of this chapter and the rules and regulations published with respect thereto.
63 The applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local
64 tax. No discount under § 58.1-622 shall be allowed on a local sales tax.

65 2. *On or after July 1, 2004, the council of any city and the governing body of any county may by*
66 *ordinance levy an additional general retail sales tax at the rate of one-half percent to provide revenue*
67 *for the general fund of such city or county. The imposition of such tax shall not exceed five years, but*
68 *may be reimposed for additional intervals not to exceed five years upon adoption of new ordinances.*
69 *For each interval of time that the tax under this subdivision is imposed, the city or county shall adjust*
70 *its real property tax rates so that the total real estate tax revenues collected for each year in such*
71 *interval of time shall not exceed the total real estate revenue collected for the year immediately*
72 *preceding the imposition of the tax under this subdivision.*

73 C. The council of any city and the governing body of any county desiring to impose a local sales tax
74 under this section may do so by the adoption of an ordinance stating its purpose and referring to this
75 section, and providing that such ordinance shall be effective on the first day of a month at least sixty
76 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner
77 so that it will be received within five days after its adoption.

78 D. Any local sales tax levied under this section shall be administered and collected by the Tax
79 Commissioner in the same manner and subject to the same penalties as provided for the state sales tax,
80 with the adjustments required by § 58.1-628.

81 E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid
82 into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books
83 under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the
84 account of each particular city or county levying a local sales tax under this section. The basis of such
85 credit shall be the city or county in which the sales were made as shown by the records of the
86 Department and certified by it monthly to the Comptroller, namely, the city or county of location of
87 each place of business of every dealer paying the tax to the Commonwealth without regard to the city or
88 county of possible use by the purchasers. If a dealer has any place of business located in more than one
89 political subdivision by reason of the boundary line or lines passing through such place of business, the
90 amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the
91 purposes of this section as follows: one-half shall be assignable to each political subdivision where two
92 are involved, one-third where three are involved, and one-fourth where four are involved.

93 F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in
94 any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia
95 in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax
96 moneys, and such payments shall be charged to the account of each such city or county under the
97 special fund created by this section. If errors are made in any such payment, or adjustments are
98 otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall
99 be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the
100 total adjustment shall be included in the payments for the next six months. In addition, the payment
101 shall include a refund of amounts erroneously not paid to the city or county and not previously refunded
102 during the three years preceding the discovery of the error. A correction and adjustment in payments
103 described in this subsection due to the misallocation of funds by the dealer shall be made within three
104 years of the date of the payment error.

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

115 H. One-half of such payments to counties are subject to the further qualification, other than as set
116 out in subsection G above, that in any county wherein is situated any incorporated town not constituting
117 a separate special school district which has complied with its charter provisions providing for the
118 election of its council and mayor for a period of at least four years immediately prior to the adoption of
119 the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for
120 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 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 subsection 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. 1. 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 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.

2. *On or after July 1, 2004, the council of any city and the governing body of any county that imposes the additional retail sales tax at the rate of one-half percent as provided in subdivision B 2 of § 58.1-605 shall impose an additional one-half percent use tax, under the same terms and conditions, to provide revenue for the general fund of such city or county.*

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 ye 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

182 for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly
183 use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by
184 cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is
185 unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible
186 personal property involved shall be remitted to the Commonwealth by such dealer without attempting to
187 assign the shipment to any city or county.

188 F. Local use tax revenue shall be distributed among the cities and counties for which it is collected,
189 respectively, as shown by the records of the Department, and the procedure shall be the same as that
190 prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is
191 not accurately assignable to a particular city or county shall be distributed monthly by the appropriate
192 state authorities among the cities and counties in this Commonwealth imposing the local use tax upon
193 the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax
194 was in effect in the taxable month involved, as shown by the records of the Department, and computed
195 with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
196 among such cities and counties, respectively, in the month of distribution. Notwithstanding any other
197 provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use
198 tax. Any significant changes to the method of local use tax distribution shall be phased in over a five
199 year period. Distribution information shall be shared with the affected localities prior to implementation
200 of the changes.

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

203 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction
204 Program.

205 A. Subject to the conditions of subsections D and E, the tax imposed by §§ 58.1-603 and 58.1-604
206 on food purchased for human consumption shall be levied and distributed as follows:

207 1. From January 1, 2000, through March 31, 2001, the tax rate on such food shall be three percent
208 of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from
209 the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii)
210 the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C
211 and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be
212 used for general fund purposes.

213 2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and one-half
214 percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue
215 from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
216 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
217 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall
218 be used for general fund purposes.

219 3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of
220 the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the
221 tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the
222 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and
223 D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be used for
224 general fund purposes.

225 4. On and after April 1, 2003, the tax rate on such food shall be one and one-half percent of the
226 gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax
227 at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the
228 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and
229 D of § 58.1-638.

230 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
231 consumption pursuant to §§ 58.1-605 and 58.1-606.

232 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
233 defined in the Food Stamp Act of 1977, 7 U.S.C. § 1012, as amended, and federal regulations adopted
234 pursuant to that Act, except it shall not include seeds and plants which produce food for human
235 consumption. For the purpose of this section, "food purchased for human consumption" shall not include
236 food sold by any retail establishment where the gross receipts derived from the sale of food prepared by
237 such retail establishment for immediate consumption on or off the premises of the retail establishment
238 constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not
239 limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises
240 of that retail establishment. For purposes of this section, "retail establishment" means each place of
241 business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a
242 certificate of registration pursuant to § 58.1-613.

243 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased

for human consumption for any 12-month period beginning on or after April 1, 2001, shall not be reduced below the rate then in effect for the Commonwealth's current fiscal year if:

1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction is contemplated in subsection A do not exceed the official general fund revenue estimates for such preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act, by at least one percent; or

2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have occurred during the then current fiscal year.

E. If the tax rate on food purchased for human consumption remains the same for the period January 1, 2000, through March 31, 2001, and the subsequent 12-month period beginning on April 1, 2001, or with respect to any consecutive 12-month periods beginning on and after April 1, 2001, the tax rate on such food shall remain the same unless none of the conditions described in subsection D have occurred, in which event the tax rate on food purchased for human consumption for the immediately following 12-month period shall be equal to the next lowest tax rate listed in subsection A.

F. *The additional one-half percent increase in the taxes imposed pursuant to §§ 58.1-603 and 58.1-604 effective July 1, 2004, shall not apply to food purchased for human consumption.*

§ 58.1-627. Bracket system for tax at rate of four percent.

The following Tax Commissioner shall develop brackets of prices that shall be used for the collection of the tax imposed by this chapter ÷ on sales of less than \$5.

\$0.00	to	\$0.14	no tax
.15	to	.42	1» tax
.43	to	.71	2» tax
.72	to	.99	3» tax
1.00	to	1.28	4» tax
1.29	to	1.57	5» tax
1.58	to	1.85	6» tax
1.86	to	2.14	7» tax
2.15	to	2.42	8» tax
2.43	to	2.71	9» tax
2.72	to	2.99	10» tax
3.00	to	3.28	11» tax
3.29	to	3.57	12» tax
3.58	to	3.85	13» tax
3.86	to	4.14	14» tax
4.15	to	4.42	15» tax
4.43	to	4.71	16» tax
4.72	to	5.00	17» tax

On transactions over five dollars greater than \$5, the tax shall be computed at three and one-half four percent, one-half cent or more being treated as one cent. If a dealer can show to the satisfaction of the Tax Commissioner that more than eighty-five 85 percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ten 10 cents or less each, and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at prices of eleven 11 cents or more.

§ 58.1-628. Bracket system for combined state and local tax.

The following Tax Commissioner shall prepare brackets of prices that shall be used for the collection of the combined state and local tax ÷ on sales less than \$5.

\$0.00	to	\$0.11	no tax
.12	to	.33	1» tax
.34	to	.55	2» tax
.56	to	.77	3» tax
.78	to	.99	4» tax
1.00	to	1.22	5» tax
1.23	to	1.44	6» tax
1.45	to	1.66	7» tax

303	1.67	to	1.88	8» tax
304	1.89	to	2.11	9» tax
305	2.12	to	2.33	10» tax
306	2.34	to	2.55	11» tax
307	2.56	to	2.77	12» tax
308	2.78	to	2.99	13» tax
309	3.00	to	3.22	14» tax
310	3.23	to	3.44	15» tax
311	3.45	to	3.66	16» tax
312	3.67	to	3.88	17» tax
313	3.89	to	4.11	18» tax
314	4.12	to	4.33	19» tax
315	4.34	to	4.55	20» tax
316	4.56	to	4.77	21» tax
317	4.78	to	5.00	22» tax

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 319 On transactions ~~over five dollars~~*greater than \$5*, the tax shall be computed at ~~four and one-half five~~
 320 percent, one-half cent or more being treated as one cent. The ~~foregoing~~ bracket system shall not relieve
 321 the dealer from the duty and liability to remit an amount equal to ~~four and one-half five~~ percent of his
 322 gross taxable sales as provided in this chapter. If the dealer, however, can show to the satisfaction of the
 323 Tax Commissioner that more than ~~eighty-five~~85 percent of the total dollar volume of his gross taxable
 324 sales during the taxable month was from individual sales at prices of ~~ten 10~~ cents or less each and that
 325 he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax
 326 from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based
 327 on that portion of the dealer's gross taxable sales which was from sales at prices of ~~eleven 11~~ cents or
 328 more.

329 **2. That the Department of Taxation shall promulgate any necessary and reasonable regulations to**
 330 **govern the administration of any additional sales and use taxes levied by localities by virtue of the**
 331 **authority created by this act, including, but not limited to, a bracket system for the collection of**
 332 **taxes in such localities.**