

# 2004 SPECIAL SESSION I

INTRODUCED

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## HOUSE BILL NO. 5013

Offered April 5, 2004

A *BILL to amend and reenact §§ 58.1-605, 58.1-606, and 58.1-628 of the Code of Virginia, relating to sales and use tax.*

Patron—Marshall, D.W.

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-605, 58.1-606, and 58.1-628 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 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. 1. *Subject to the provisions of subdivision D 2, the council of any city and the governing body of any county may levy an additional one-half percent general retail sales tax 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.*

2. *This additional one-half percent local sales tax shall be levied only if the tax is approved in a referendum within the county or city, which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors, city council, or on the filing of a petition signed by a number of registered voters of the county or city equal in number to 10 percent of the number of voters registered in the county or city, as appropriate on January 1 of the year in which the petition is filed with the court of such county or city. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county or city once a week for three consecutive weeks prior to the election. If the voters affirm the levy of the additional one-half percent local sales tax, the tax shall be effective on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or city council, or such petition states for what projects and purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and purposes the revenues collected from the tax are to be used.*

DE. 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.

EF. 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

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59 amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the  
60 purposes of this section as follows: one-half shall be assignable to each political subdivision where two  
61 are involved, one-third where three are involved, and one-fourth where four are involved.

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

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

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

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

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

111 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;  
112 collection thereof by Commonwealth and return of revenues to the cities and counties.

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

120 **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. 1. Subject to the provisions of subdivision C 2, the council of any city and the governing body of any county may levy an additional one-half percent general retail sales tax 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.*

*2. This additional one-half percent local sales tax shall be levied only if the tax is approved in a referendum within the county or city, which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors, city council, or on the filing of a petition signed by a number of registered voters of the county or city equal in number to 10 percent of the number of voters registered in the county or city, as appropriate on January 1 of the year in which the petition is filed with the court of such county or city. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county or city once a week for three consecutive weeks prior to the election. If the voters affirm the levy of the additional one-half percent local sales tax, the tax shall be effective on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or city council, or such petition states for what projects and purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and purposes the revenues collected from the tax are to be used.*

*ED.* 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.

*DE.* 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.

*EF.* 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.

*EG.* 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. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

*GH.* 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.

§ 58.1-628. 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 of less than \$5.*

192	\$0.00	to	\$0.11	no tax
193	.12	to	.33	1&raquo; tax
194	.34	to	.55	2&raquo; tax
195	.56	to	.77	3&raquo; tax
196	.78	to	.99	4&raquo; tax
197	1.00	to	1.22	5&raquo; tax
198	1.23	to	1.44	6&raquo; tax
199	1.45	to	1.66	7&raquo; tax
200	1.67	to	1.88	8&raquo; tax
201	1.89	to	2.11	9&raquo; tax
202	2.12	to	2.33	10&raquo; tax
203	2.34	to	2.55	11&raquo; tax
204	2.56	to	2.77	12&raquo; tax
205	2.78	to	2.99	13&raquo; tax
206	3.00	to	3.22	14&raquo; tax
207	3.23	to	3.44	15&raquo; tax
208	3.45	to	3.66	16&raquo; tax
209	3.67	to	3.88	17&raquo; tax
210	3.89	to	4.11	18&raquo; tax
211	4.12	to	4.33	19&raquo; tax
212	4.34	to	4.55	20&raquo; tax
213	4.56	to	4.77	21&raquo; tax
214	4.78	to	5.00	22&raquo; tax

On transactions ~~over five dollars~~ *greater than \$5*, the tax shall be computed at four and one-half percent *or five percent in those localities in which an additional local sales and use tax is approved in accordance with subsection D of § 58.1-605 and subsection C of § 58.1-606*, one half cent or more being treated as one cent. The ~~foregoing~~ bracket system shall not relieve the dealer from the duty and liability to remit an amount equal to four and one-half percent, *or five percent in those localities in which an additional local sales and use tax is approved in accordance with subsection D of § 58.1-605 and subsection C of § 58.1-606*, of his gross taxable sales as provided in this chapter. If the dealer, however, can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ten 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 cents or more.