

2004 SPECIAL SESSION I

INTRODUCED

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HOUSE BILL NO. 5017

Offered April 6, 2004

A BILL to amend and reenact §§ 29.1-101, 29.1-101.01, 58.1-603, 58.1-604, 58.1-611.1, 58.1-627, and 58.1-628 of the Code of Virginia, relating to increase of the sales and use tax for education.

Patron—Tata

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 29.1-101, 29.1-101.01, 58.1-603, 58.1-604, 58.1-611.1, 58.1-627, and 58.1-628 of the Code of Virginia are amended and reenacted as follows:

§ 29.1-101. Game Protection Fund.

The amount received by the State Treasurer from the sale of hunting, trapping and fishing licenses, revenue generated from the sales and use tax pursuant to subsection E F of § 58.1-638, and such other items as may accrue to the Board shall be set aside and shall constitute the Game Protection Fund. The income and principal of this Fund, including any unexpended balance, shall be a separate fund in the state treasury and shall only be used for the payment of the salaries, allowances, wages, and expenses incident to carrying out the provisions of the hunting, trapping and inland fish laws and for no other purpose, except as provided in §§ 29.1-101.01, 29.1-701, 58.1-345 and 58.1-1410.

§ 29.1-101.01. Capital Improvement Fund.

There is hereby created in the state treasury a special, nonreverting fund to be known as the Capital Improvement Fund, hereafter referred to as "the Fund." The Fund shall consist of those funds that may be so designated by the Board and any gifts, grants, and contributions from any person, foundation, or other legal entity. In addition, the Board may transfer to this Fund an amount equal to fifty percent or less of the revenue generated annually from the sales and use tax which has been deposited in the Game Protection Fund pursuant to subsection E F of § 58.1-638. The income and principal in the Fund shall be used only for the purchase, construction, maintenance, or repair of capital assets of the Department.

The Fund shall be established on the books of the Comptroller. All moneys received shall be paid into the state treasury and credited to the Fund. Interest earned on the moneys in the Fund shall remain in the Fund and be credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund, except as provided in subsection E of § 58.1-638.

§ 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

INTRODUCED

HB5017

59 price if such property is brought within this Commonwealth for use within six months of its acquisition;
60 but if so brought within this Commonwealth six months or more after its acquisition, such property shall
61 be taxed on the basis of the current market value (but not in excess of its cost price) of such property at
62 the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the
63 cost price or current market value as the duration of time of use within this Commonwealth bears to the
64 total useful life of such property (but it shall be presumed in all cases that such property will remain
65 within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to
66 the contrary).

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

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

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

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

76 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction
77 Program.

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

80 1. From January 1, 2000, through ~~March 31, 2001~~ June 30, 2004, the tax rate on such food shall be
81 three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the
82 revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
83 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
84 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half
85 percent shall be used for general fund purposes.

86 2. From April 1, 2001, through March 31, 2002, *Beginning July 1, 2004*, the tax rate on such food
87 shall be two and one-half percent of the gross sales price. The revenue from the tax shall be distributed
88 as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in
89 subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed
90 as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of
91 one percent shall be used for general fund purposes.

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

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

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

105 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
106 defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted
107 pursuant to that Act, except it shall not include seeds and plants which produce food for human
108 consumption. For the purpose of this section, "food purchased for human consumption" shall not include
109 food sold by any retail establishment where the gross receipts derived from the sale of food prepared by
110 such retail establishment for immediate consumption on or off the premises of the retail establishment
111 constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not
112 limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises
113 of that retail establishment. For purposes of this section, "retail establishment" means each place of
114 business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a
115 certificate of registration pursuant to § 58.1-613.

116 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased
117 for human consumption for any 12-month period beginning on or after April 1, 2001, shall not be
118 reduced below the rate then in effect for the Commonwealth's current fiscal year if:

119 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction
120 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.

D. 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 five dollars.

\$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 five dollars, 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 five dollars.

\$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
1.67	to	1.88	8» tax
1.89	to	2.11	9» tax
2.12	to	2.33	10» tax

179	_____	2.34	_____	to	_____	2.55	_____	11» tax
180	_____	2.56	_____	to	_____	2.77	_____	12» tax
181	_____	2.78	_____	to	_____	2.99	_____	13» tax
182	_____	3.00	_____	to	_____	3.22	_____	14» tax
183	_____	3.23	_____	to	_____	3.44	_____	15» tax
184	_____	3.45	_____	to	_____	3.66	_____	16» tax
185	_____	3.67	_____	to	_____	3.88	_____	17» tax
186	_____	3.89	_____	to	_____	4.11	_____	18» tax
187	_____	4.12	_____	to	_____	4.33	_____	19» tax
188	_____	4.34	_____	to	_____	4.55	_____	20» tax
189	_____	4.56	_____	to	_____	4.77	_____	21» tax
190	_____	4.78	_____	to	_____	5.00	_____	22» tax

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