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HOUSE BILL NO. 926

Offered January 11, 2006
Prefiled January 10, 2006

A BILL to amend and reenact § 58.1-609.11 of the Code of Virginia, relating to sales and use tax refund for certain nonprofit entities.

Patrons—Landes, Armstrong, Callahan, Caputo, Carrico, Cox, Dance, Dudley, Fralin, Hamilton, Hurt, Ingram, Jones, S.C., Lingamfelter, Marshall, D.W., Marshall, R.G., Morgan, Nutter, O'Bannon, Parrish, Saxman, Sherwood, Shuler, Spruill, Ware, O., Watts, Wittman and Wright; Senators: Colgan, Edwards, Hanger, Lambert, Quayle and Reynolds

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-609.11 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-609.11. Exemptions for nonprofit entities.

A. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as such sections are in effect on June 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in subsection E, each entity must follow the procedures set forth in subsection B and meet the criteria set forth in subsection C. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection B and meets the criteria set forth in subsection C.

B. On and after July 1, 2004, in addition to the organizations described in subsection A, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

C. To qualify for the exemption under subsection B, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501 (c) (3) of the Internal Revenue Code or (ii) under § 501 (c) (4) of the Internal Revenue Code and, if it is exempt under § 501 (c) (4) of the Internal Revenue Code, it is organized for a charitable purpose; or

b. The entity has annual gross receipts less than $5,000, and the entity is organized for at least one of the purposes set forth in § 501 (c) (3) of the Internal Revenue Code, or one of the charitable purposes set forth in § 501 (c) (4) of the Internal Revenue Code; and

2. The entity is in compliance with all applicable state solicitation laws, and where applicable, provides appropriate verification of such compliance; and

3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

4. If the entity's gross annual revenue was $250,000 or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant; and

5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and

6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:

a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and

b. The location where the financial records of the entity are available for public inspection.

D. On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

E. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

F. Any entity that is determined under subsections B, C, and D by the Department of Taxation to be exempt from paying sales and use tax shall also be entitled, as reimbursement for capital construction expenditures for additional retail locations in the Commonwealth, to a refund of up to 25% of the sales and use tax it has collected and remitted, in the same year that the capital expenditures are incurred, on its sales of goods that have been donated to it, provided the entity (i) routinely sells donated goods, (ii) provides job training and employment to individuals with workplace disadvantages and disabilities, (iii) spends at least 75% of its annual revenue on job training, job placement, or other related community services, (iv) submits a refund application to the Department of Taxation after the new retail location opens for business, and (v) provides records of capital construction expenditures for the new retail location and any other information required by the Department of Taxation as necessary to process the refund.

The amount of the refund shall not exceed $1 million for each new retail location. As used in this section, "capital construction expenditures" means expenditures for the construction of any new facilities or the purchase and renovation of any existing facilities, but does not include expenditures for real property.

~~F~~*G*. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection C shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

~~G~~*H*. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

~~H~~*I*. The Department of Taxation shall file an annual report no later than December 1, 2004, and December 1 of each succeeding year with the Chairman of the House Finance Committee, the Chairman of the House Appropriations Committee, and the Chairman of the Senate Finance Committee, setting forth the annual fiscal impact of the sales and use tax exemptions for nonprofit entities.