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SENATE BILL NO. 595

Offered January 11, 2006

A *BILL to amend and reenact §§ 15.2-1104.1, 58.1-601, 58.1-609.11, 58.1-623.1 and 58.1-3818, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to sales and use tax; refund for exempted entities.*

Patron—Watkins

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1104.1, 58.1-601, 58.1-609.11, 58.1-623.1 and 58.1-3818, as it is currently effective and as it shall become effective, of the Code of Virginia, are amended and reenacted as follows:

§ 15.2-1104.1. Tax on admissions to charitable events.

A municipal corporation that generally levies an admissions tax may, by ordinance, elect not to levy an admissions tax on admission to an event, provided that the purpose of the event is solely to raise money for charitable purposes and that the net proceeds derived from the event will be transferred to an entity or entities that are ~~exempt from~~ *eligible for a refund of sales and use tax pursuant to § 58.1-609.11.*

§ 58.1-601. Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter.

B. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance which the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

C. *The provisions of subsection B shall also apply to persons eligible for a refund of sales and use taxes as provided in this chapter. The request for information from such persons may include information relating to the evaluation of refunds of such taxes paid to persons and information relating to a person's eligibility for a refund of such taxes.*

§ 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~~ *December 31, 2006*, 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 *may apply for a refund of the tax imposed by this chapter, or imposed pursuant to the authority granted in § 58.1-605 or 58.1-606, on its purchases made on or after January 1, 2007, (i) of tangible personal property for use or consumption or (ii) of taxable services.*

B. On and after ~~July 1, 2004~~ *January 1, 2007*, in addition to the organizations described in

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59 subsection A, *a nonprofit entity meeting the criteria set forth in subsection C may apply for a refund of*
60 *the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall*
61 *not apply to on its purchases of tangible personal property for use or consumption or purchases of*
62 *taxable services by any the nonprofit entity that, pursuant to this section, (i) files an appropriate*
63 *application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a*
64 *certificate of exemption from the Department of Taxation for the period of time covered by the*
65 *certificate.*

66 C. To qualify for ~~the exemption~~ *the right to a refund* under subsection B, a nonprofit entity must
67 meet the applicable criteria under this subsection as follows:

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

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

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

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

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

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

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

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

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

88 D. ~~On and after July 1, 2004, in addition to the criteria set forth in subsection C, the Department of~~
89 ~~Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such~~
90 ~~records are not available through no fault of the entity. If the records are not available through no fault~~
91 ~~of the entity, then the entity must provide such information to the Department the following year. No~~
92 ~~information provided pursuant to this subsection (except the failure to provide available information)~~
93 ~~shall be a basis for the Department of Taxation to refuse to exempt an entity. 1. The application for a~~
94 ~~refund under this section shall be on forms prescribed by the Tax Commissioner and shall be filed with~~
95 ~~the Tax Commissioner within three years from the last day of the calendar year in which such purchase~~
96 ~~is made. The Tax Commissioner shall implement procedures allowing eligible organizations to apply~~
97 ~~quarterly for refunds beginning with calendar year 2007. In addition, when and if the amount that may~~
98 ~~be refunded to an organization under this section is at least \$5,000 in a calendar year, including any~~
99 ~~amount already refunded in such year, the organization may apply for the refund at any time during the~~
100 ~~calendar year.~~

101 2. *The amount of the refund issued under this section to an eligible organization shall be equal to*
102 *100 % of the tax imposed by this chapter, or imposed pursuant to the authority granted in § 58.1-605 or*
103 *58.1-606. Interest shall be allowed and paid on any refund that has not been issued within 59 days after*
104 *the Tax Commissioner has received the application for the refund. Such interest shall begin to accrue*
105 *from a date 60 days after the Tax Commissioner has received a properly completed application for*
106 *refund and shall end on a date determined by the Tax Commissioner preceding the date of the refund*
107 *check by not more than five days. Interest shall be paid at a rate equal to the rate of interest*
108 *established pursuant to § 58.1-15.*

109 3. *Such organizations may not apply for a refund of such tax pursuant to this section on any*
110 *purchase that is not in accordance with the normal responsibilities of the organization. In addition, no*
111 *refund shall be issued for a purchase made by an eligible organization until it has furnished all*
112 *necessary and reasonable information as requested by the Tax Commissioner. The application for refund*
113 *pursuant to this section shall include a report of the organization's total purchases (for which the refund*
114 *application is being filed) by county and city. In addition, the application for refund shall require only*
115 *that information that is strictly necessary for purposes of issuing such refunds and the application shall*
116 *be structured so as to allow a summary report of the organization's total purchases by county and city.*

117 4. *Refunds under this section shall be issued by warrant of the Comptroller drawn on the state*
118 *treasury as soon as practicable after certification from the Tax Commissioner of the proper amount of*
119 *the refund and the address to which the refund should be sent.*

120 5. *The amount of the refund, pursuant to this subsection, attributable to the tax authorized under*

§ 58.1-605 or 58.1-606 shall be deducted from the respective county's or city's share of the net revenue distributable pursuant to subsection C of § 58.1-638. The amount of the refund attributable to each county or city shall be determined from the organization's report of its total purchases by county and city as provided in subdivision 3. Such deduction from a county's or city's share of the net revenue distributable shall occur in the month following the month in which the refund has been issued.

6. The provisions of subsections D, E, and G of § 58.1-623.1 shall apply *mutatis mutandis* to applications for refunds made pursuant to this section.

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. 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. 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.E. The Department of Taxation shall *quarterly* file an *annual a* 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 that includes, but is not limited to, (i) the amount of sales and use taxes refunded year-to-date pursuant to the provisions of this section and the amount of purchases upon which such refunds were determined, and (ii) the same information as required in clause (i) but reported by county or city.

§ 58.1-623.1. Misuse of exemption certificates; suspension of exemptions; penalties.

A. Whenever the Tax Commissioner determines that any person has misused an exemption certificate, the Tax Commissioner, after giving such person 10-days' notice in writing specifying the time and place of hearing and requiring him to show cause why the exemption should not be suspended, may suspend the exemption held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

B. Any person who knowingly uses or gives an exemption certificate during a period of suspension of an exemption under this section shall be guilty of a Class 1 misdemeanor.

C. It shall be the duty of any person whose exemption is suspended under the provisions of this section to notify each dealer from whom purchases or leases of tangible personal property are made, of the suspension of its exemption, and of the invalidity of any exemption certificates filed with such dealers.

D. In lieu of the suspension of a person's exemption under subsection A, the Tax Commissioner may assess a penalty of up to \$1,000 for the misuse of an exemption certificate by that person or by any other person who, with the consent or knowledge of the exemption holder, has misused the certificate. The penalty shall be assessed and collected as a part of the tax, and the person so assessed may appeal the penalty pursuant to the provisions of Article 2 (§ 58.1-1820 et seq.) of Chapter 18 of this title.

E. In any instance in which the Tax Commissioner determines that there has been any misuse of an exemption certificate, the person holding the exemption shall be liable for the full amount of tax, and any interest thereon, applicable to any purchase improperly made with his exemption certificate.

F. The suspension of the exemption shall require that the person pay the full amount of the tax at the time of purchase and apply for a refund of the tax so paid. ~~No interest shall be paid on any such refund~~ *Interest shall be paid on such refund in accordance with the conditions for the payment of interest on refunds as provided in § 58.1-609.11.* Upon application of the person whose certificate has been suspended, the Tax Commissioner, for good cause shown, may reinstate the person's certificate; however, any such suspension period shall run for at least one year.

G. Notwithstanding § 58.1-3, the Tax Commissioner may report any gross misuses of exemption certificates to the Secretary of Finance and the chairmen of the money committees, for their confidential use, prior to the beginning of the following session of the General Assembly.

§ 58.1-3818. (Expires January 1, 2008) Admissions tax in certain counties.

A. Fairfax, Arlington, Dinwiddie, Prince George and Brunswick Counties are hereby authorized to levy a tax on admissions charged for attendance at any event. The tax shall not exceed 10 percent of the

182 amount of charge for admission to any such event. Notwithstanding any other provisions of law, the
183 governing bodies of such counties shall prescribe by ordinance the terms, conditions and amount of such
184 tax and may classify between events conducted for charitable and those conducted for noncharitable
185 purposes.

186 B. Notwithstanding the provisions of subsection A, any county with a population of at least 27,500
187 but not more than 28,250 and any county with a population of at least 10,400 but not more than 10,490
188 as determined by the 1990 United States Census are hereby authorized to levy a tax on admissions
189 charged for attendance at any event as set forth in subsection A.

190 C. Notwithstanding the provisions of subsection A, any county with a population of at least 12,450
191 but not more than 12,850 is hereby authorized to levy a tax on admissions charged for attendance at any
192 spectator event; however, a tax shall not be levied on admissions charged to participants in order to
193 participate in any event. The tax shall not exceed 10 percent of the amount of charge for admission to
194 any event. Notwithstanding any other provisions of law, the governing body of such county shall
195 prescribe by ordinance the terms, conditions and amount of such tax and may classify between the
196 events as set forth in § 58.1-3817.

197 D. Notwithstanding the provisions of subsections A, B, and C, any county in which a major league
198 baseball stadium, as defined in § 15.2-5800, is located is hereby authorized to levy (i) a tax on
199 admissions charged at any event at such stadium and (ii) a surcharge on admissions charged for
200 attendance at any event at such stadium if it has a seating capacity of at least 40,000 seats. The tax on
201 admissions shall not exceed 10 percent. Such surcharge shall not exceed two percent of the charge for
202 admissions. Notwithstanding any other provisions of law, the governing bodies of such counties shall
203 prescribe by ordinance the terms, conditions, and amounts of such tax and surcharge and may classify
204 between events conducted for noncharitable purposes.

205 E. Notwithstanding the provisions of subsections A, B, C, and D, localities may, by ordinance, elect
206 not to levy an admissions tax on admission to an event, provided that the purpose of the event is solely
207 to raise money for charitable purposes and that the net proceeds derived from the event will be
208 transferred to an entity or entities that are ~~exempt from~~ *eligible for a refund of sales and use tax*
209 pursuant to § 58.1-609.11.

210 § 58.1-3818. (Effective January 1, 2008) Admissions tax in certain counties.

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223 spectator event; however, a tax shall not be levied on admissions charged to participants in order to
224 participate in any event. The tax shall not exceed 10 percent of the amount of charge for admission to
225 any event. Notwithstanding any other provisions of law, the governing body of such county shall
226 prescribe by ordinance the terms, conditions and amount of such tax and may classify between the
227 events as set forth in § 58.1-3817.

228 D. Notwithstanding the provisions of subsections A, B and C, localities may, by ordinance, elect not
229 to levy an admissions tax on admission to an event, provided that the purpose of the event is solely to
230 raise money for charitable purposes and that the net proceeds derived from the event will be transferred
231 to an entity or entities that are ~~exempt from~~ *eligible for a refund of sales and use tax* pursuant to
232 § 58.1-609.11.

233 **2. That the provisions of this act shall become effective on January 1, 2007.**

234 **3. That beginning July 1, 2006, the Tax Commissioner shall promulgate guidelines to implement**
235 **procedures for providing refunds to eligible organizations pursuant to the provisions of this act. In**
236 **preparing such guidelines, the Tax Commissioner shall be exempt from the provisions of the**
237 **Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

238 **4. That any organization that was exempt from collecting state and local sales or use taxes as of**
239 **December 31, 2006 shall remain exempt from the collection of such taxes under the same terms**
240 **and conditions as provided under § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as**
241 **such sections were in effect on June 30, 2003, provided it meets the criteria of subsections A and B**
242 **of § 58.1-609.11.**