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SENATE BILL NO. 597

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 31, 2006)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact §§ 58.1-3700.1 and 58.1-3706 of the Code of Virginia, relating to the local license tax on retailers of certain fuels.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3700.1 and 58.1-3706 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3700.1. Definitions.

For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless otherwise required by the context:

"Affiliated group" means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

b. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

3. Two or more entities if such entities satisfy the requirements in subdivision 1 or 2 of this definition as if they were corporations and the ownership interests therein were stock.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or

SENATE

SUBSTITUTE

SB597S1

60 business.

61 "Definite place of business" means an office or a location at which occurs a regular and continuous
62 course of dealing for thirty consecutive days or more. A definite place of business for a person engaged
63 in business may include a location leased or otherwise obtained from another person on a temporary or
64 seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite
65 place of business if there is no definite place of business maintained elsewhere and the person is not
66 subject to licensure as a peddler or itinerant merchant.

67 "Entity" means a business organization, other than a sole proprietorship, that is a corporation, limited
68 liability company, limited partnership, or limited liability partnership duly organized under the laws of
69 the Commonwealth or another state.

70 "Financial services" means the buying, selling, handling, managing, investing, and providing of
71 advice regarding money, credit, securities, or other investments.

72 *"Fuel sale" or "fuel sales" shall mean retail sales of alternative fuel, blended fuel, diesel fuel,*
73 *gasohol, or gasoline, as such terms are defined in § 58.1-2201.*

74 *"Gas retailer" means a person or entity engaged in business as a retailer offering to sell at retail on*
75 *a daily basis alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined*
76 *in § 58.1-2201.*

77 "Gross receipts" means the whole, entire, total receipts, without deduction.

78 "License year" means the calendar year for which a license is issued for the privilege of engaging in
79 business.

80 "Professional services" means services performed by architects, attorneys-at-law, certified public
81 accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing
82 arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of
83 human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and
84 no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to
85 § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed
86 knowledge of some department of science or learning, gained by a prolonged course of specialized
87 instruction and study, is used in its practical application to the affairs of others, either advising, guiding,
88 or teaching them, and in serving their interests or welfare in the practice of an art or science founded on
89 it. The word "profession" implies attainments in professional knowledge as distinguished from mere
90 skill, and the application of knowledge to uses for others rather than for personal profit.

91 "Purchases" means all goods, wares and merchandise received for sale at each definite place of
92 business of a wholesale merchant. The term shall also include the cost of manufacture of all goods,
93 wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A
94 wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares
95 and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of
96 manufacture.

97 "Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or
98 appraisal of real property.

99 § 58.1-3706. Limitation on rate of license taxes.

100 A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703,
101 no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712, 58.1-3712.1
102 and 58.1-3713, or any other provision of this title or any charter, shall be imposed on any person whose
103 gross receipts from a business, profession or occupation subject to licensure are less than: (i) \$100,000
104 in any locality with a population greater than 50,000; or (ii) \$50,000 in any locality with a population of
105 25,000 but no more than 50,000. Any business with gross receipts of more than \$100,000, or \$50,000,
106 as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the class of
107 enterprise listed:

108 1. For contracting, and persons constructing for their own account for sale, sixteen cents per \$100 of
109 gross receipts;

110 2. For retail sales, twenty cents per \$100 of gross receipts;

111 3. For financial, real estate and professional services, fifty-eight cents per \$100 of gross receipts; and

112 4. For repair, personal and business services, and all other businesses and occupations not specifically
113 listed or excepted in this section, thirty-six cents per \$100 of gross receipts.

114 The rate limitations prescribed in this section shall not be applicable to license taxes on (i)
115 wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be
116 governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by
117 § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi)
118 itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums,
119 arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public,
120 which shall be governed by § 58.1-3729; (viii) savings institutions and credit unions, which shall be
121 governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct

122 sellers, which shall be governed by § 58.1-3719.1.

123 B. Any county, city or town which had, on January 1, 1978, a license tax rate, for any of the
124 categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a
125 higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the
126 following conditions:

127 1. A locality may not increase a rate on any category which is at or above the maximum prescribed
128 for such category in subsection A.

129 2. If a locality increases the rate on a category which is below the maximum, it shall apply all
130 revenue generated by such increase to reduce the rate on a category or categories which are above such
131 maximum.

132 3. A locality shall lower rates on categories which are above the maximums prescribed in subsection
133 A for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter,
134 than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue
135 received from all categories in tax year 1980, plus one-third of the amount, if any, by which such
136 revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for
137 each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the
138 increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If
139 in any tax year the amount of revenues received from all categories exceeds the revenue base for such
140 year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the
141 maximum shall be subtracted from the revenue base for such year. The resulting amount shall be
142 allocated to the category or categories with rates above the maximum in a manner determined by the
143 locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates
144 shall be applicable to such category or categories for the second tax year following the year whose
145 revenue was used to make the calculation.

146 C. Any person engaged in the short-term rental business as defined in § 58.1-3510 shall be classified
147 in the category of retail sales for license tax rate purposes.

148 D. 1. Any person, firm, or corporation designated as the principal or prime contractor receiving
149 identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of
150 the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer
151 software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical
152 sciences shall be subject to a license tax rate not to exceed three cents per \$100 of such federal funds
153 received in payment of such contracts upon documentation provided by such person, firm or corporation
154 to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

155 2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by
156 that locality in accordance with subdivision 1 of this subsection, and on which a license tax is due and
157 paid, or which gross receipts defined by subdivision 1 of this subsection are properly reported to but
158 exempted by a Virginia locality from taxation, shall not be subject to local license taxation by any other
159 locality in the Commonwealth.

160 3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county
161 manager plan of government, the following shall govern the taxation of the licensees described in
162 subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors
163 receiving identifiable federal appropriations for research and development services as defined in
164 § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic
165 systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v)
166 electronic and physical sciences may be separately classified by any such county and subject to tax at a
167 license tax rate not to exceed the limits set forth in subsections A through C above as to such federal
168 funds received in payment of such contracts upon documentation provided by such persons, firms, or
169 corporations to the local commissioner of revenue or finance officer confirming the applicability of this
170 subsection.

171 *E. In any case in which the Department of Mines, Minerals and Energy determines that the weekly*
172 *U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District*
173 *- Lower Atlantic Region) has increased by 20% or greater in any one-week period over the immediately*
174 *preceding one-week period and does not fall below the increased rate for at least 28 consecutive days*
175 *immediately following the week of such increase, then, notwithstanding any tax rate on retailers imposed*
176 *by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in the following*
177 *license year shall not exceed 110% of the gross receipts taxes on fuel sales made by such retailer in the*
178 *license year of such increase. For license years beginning on or after January 1, 2006, every gas*
179 *retailer shall maintain separate records for fuel sales and nonfuel sales and shall make such records*
180 *available upon request by the local tax official.*

181 *The provisions of this subsection shall not apply to any person or entity (i) not conducting business*
182 *as a gas retailer in the county, city, or town for the entire license year immediately preceding the*

183 *license year of such increase or (ii) that was subject to a license fee in the county, city, or town*
184 *pursuant to § 58.1-3703 for the license year immediately preceding the license year of such increase.*
185 *The Virginia Petroleum, Convenience and Grocery Association may make a written request to the*
186 *Director of the Department of Mines, Minerals and Energy to determine if such increase has occurred*
187 *and remained in effect for such 28-day period. Upon receipt of such request, the Department shall*
188 *determine if such increase has occurred and shall promptly report its findings to the Virginia Petroleum,*
189 *Convenience and Grocery Association; the Virginia Municipal League; and the Virginia Association of*
190 *Counties.*