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## SENATE BILL NO. 1222

Offered January 14, 2009

Prefiled January 13, 2009

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

\_\_\_\_\_  
Patron—Obenshain

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Referred to Committee on Finance

**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 \$1 million or greater in the previous year, then the entity must provide a financial audit performed by an independent certified public accountant. If the entity's gross annual revenue was between \$750,000 and \$1 million at least \$750,000 in the previous year, then the entity must provide either a financial audit performed by an independent certified public accountant or a financial review performed by an independent certified public accountant. However, for any entity

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59 *with gross annual revenue of at least \$1 million in the previous year, the Department may require that*  
60 *the entity provide a financial audit performed by an independent certified public accountant. If the*  
61 *Department specifically requires an entity with gross annual revenue of at least \$1 million in the*  
62 *previous year to provide a financial audit performed by an independent certified public accountant, then*  
63 *the entity shall provide such audit in order to qualify for the exemption under this section, which audit*  
64 *shall be in lieu of the financial review; and*

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

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

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

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

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

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

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

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

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