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**HOUSE BILL NO. 57**

Offered January 13, 2010

Prefiled December 22, 2009

*A BILL to amend and reenact §§ 58.1-3703 and 58.1-3706 of the Code of Virginia, relating to imposition of the business, professional, and occupational license tax and rate limitations.*

Patrons—Cole and Pollard

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-3703 and 58.1-3706 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed \$100 for any locality with a population greater than 50,000, \$50 for any locality with a population of 25,000 but no more than 50,000 and \$30 for any locality with a population smaller than 25,000. For purposes of this section, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. Such governing body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed \$50 by January 1, 2000. The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private businesses and industries entering into agreements for the establishment, installation, renovation, remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

C. No county, city, or town shall impose a license fee or levy any license tax:

1. On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by other provisions of law;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the

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59 provisions of this subdivision;

60 8. [Repealed.]

61 9. On or measured by receipts for management, accounting, or administrative services provided on a  
62 group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural  
63 cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1,  
64 or a member or subsidiary or affiliated association thereof, to other members of the same group. This  
65 exemption shall not exempt any such corporation from such license or other tax measured by receipts  
66 from outside the group;

67 10. On or measured by receipts or purchases by an entity which is a member of an affiliated group  
68 of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated  
69 entities from such license or other tax measured by receipts or purchases from outside the affiliated  
70 group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax  
71 on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the  
72 fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity.  
73 Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in  
74 this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the  
75 affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are  
76 manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

77 11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title  
78 or on any agent of such company;

79 12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this  
80 title;

81 13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for  
82 which the taxicab driver operates;

83 14. On any blind person operating a vending stand or other business enterprise under the jurisdiction  
84 of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in  
85 § 51.5-98;

86 15. [Expired.]

87 16. [Repealed.]

88 17. On an accredited religious practitioner in the practice of the religious tenets of any church or  
89 religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely  
90 in praying for others upon accreditation by such church or religious denomination;

91 18. (a) On or measured by receipts of a charitable nonprofit organization except to the extent the  
92 organization has receipts from an unrelated trade or business the income of which is taxable under  
93 Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "charitable nonprofit  
94 organization" means an organization which is described in Internal Revenue Code § 501(c)(3) and to  
95 which contributions are deductible by the contributor under Internal Revenue Code § 170, except that  
96 educational institutions shall be limited to schools, colleges and other similar institutions of learning.

97 (b) On or measured by gifts, contributions, and membership dues of a nonprofit organization.  
98 Activities conducted for consideration which are similar to activities conducted for consideration by  
99 for-profit businesses shall be presumed to be activities that are part of a business subject to licensure.  
100 For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal  
101 income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations;

102 19. On any venture capital fund or other investment fund, except commissions and fees of such  
103 funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality  
104 in which the real estate is located provided the locality is otherwise authorized to tax such businesses  
105 and rental of real estate;

106 20. On total assessments paid by condominium unit owners for common expenses. "Common  
107 expenses" and "unit owner" have the same meanings as in § 55-79.41; or

108 21. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or  
109 title to which is held by the Commonwealth or any political subdivision thereof or by the United States  
110 as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the  
111 Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.

112 *D. Notwithstanding any other provision of law, no county, city or town shall impose the local  
113 business license tax pursuant to the provisions of this chapter if such locality did not impose the tax as  
114 of January 1, 2010.*

115 § 58.1-3706. Limitation on rate of license taxes.

116 A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703,  
117 no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712, 58.1-3712.1  
118 and 58.1-3713, or any other provision of this title or any charter, shall be imposed on any person whose  
119 gross receipts from a business, profession or occupation subject to licensure are less than: (i) \$100,000  
120 in any locality with a population greater than 50,000; or (ii) \$50,000 in any locality with a population of

25,000 but no more than 50,000. Any business with gross receipts of more than \$100,000, or \$50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the class of enterprise listed:

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

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

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

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

The rate limitations prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi) itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed by § 58.1-3729; (viii) savings institutions and credit unions, which shall be governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct sellers, which shall be governed by § 58.1-3719.1.

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

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

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

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

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

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

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

3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county manager plan of government, the following shall govern the taxation of the licensees described in subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v)

182 electronic and physical sciences may be separately classified by any such county and subject to tax at a  
183 license tax rate not to exceed the limits set forth in subsections A through C above as to such federal  
184 funds received in payment of such contracts upon documentation provided by such persons, firms, or  
185 corporations to the local commissioner of revenue or finance officer confirming the applicability of this  
186 subsection.

187 E. In any case in which the Department of Mines, Minerals and Energy determines that the weekly  
188 U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District  
189 - Lower Atlantic Region) has increased by 20% *percent* or greater in any one-week period over the  
190 immediately preceding one-week period and does not fall below the increased rate for at least 28  
191 consecutive days immediately following the week of such increase, then, notwithstanding any tax rate on  
192 retailers imposed by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in  
193 the following license year shall not exceed 110% *percent* of the gross receipts taxes on fuel sales made  
194 by such retailer in the license year of such increase. For license years beginning on or after January 1,  
195 2006, every gas retailer shall maintain separate records for fuel sales and nonfuel sales and shall make  
196 such records available upon request by the local tax official.

197 The provisions of this subsection shall not apply to any person or entity (i) not conducting business  
198 as a gas retailer in the county, city, or town for the entire license year immediately preceding the license  
199 year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to  
200 § 58.1-3703 for the license year immediately preceding the license year of such increase.

201 The Department of Mines, Minerals and Energy shall determine annually if such increase has  
202 occurred and remained in effect for such 28-day period.

203 *F. Notwithstanding any other provision of law, any county, city or town that had, on January 1,*  
204 *2010, a license tax rate for any of the categories listed in subsection A may maintain the rate for such*  
205 *categories, but shall not increase the rate applicable on January 1, 2010,*