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HOUSE BILL NO. 1099

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 3, 2014)

(Patron Prior to Substitute—Delegate Farrell)

A *BILL to amend and reenact §§ 58.1-3833 and 58.1-3840 of the Code of Virginia, relating to local meals tax and food and beverage tax.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3833 and 58.1-3840 of the Code of Virginia are amended and reenacted as follows:
§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by: (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; *or* educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding ~~three~~ 24 times per calendar year as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools, colleges, and universities to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the

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60 governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an
61 amount and on such terms as the governing body may by ordinance prescribe.

62 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
63 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
64 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
65 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.
66 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
67 law shall constitute embezzlement pursuant to § 18.2-111.

68 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
69 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

70 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
71 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition
72 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or
73 service charge added by the restaurant in addition to the sales price, but only to the extent that such
74 mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages
75 sold in factory sealed containers and purchased for off-premises consumption or food purchased for
76 human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended,
77 and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad
78 bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment
79 of vegetables, and nonfactory sealed beverages.

80 **§ 58.1-3840. Certain excise taxes permitted.**

81 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any
82 city or town having general taxing powers established by charter pursuant to or consistent with the
83 provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals,
84 meals, and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the
85 amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii)
86 that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the
87 restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity
88 or service charge does not exceed 20% of the sales price; or (iii) food and beverages sold through
89 vending machines or on any tangible personal property purchased with food coupons issued by the
90 United States Department of Agriculture under the Food Stamp Program or drafts issued through the
91 Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals
92 may be imposed when sold or provided by: (a) restaurants, as such term is defined in subdivision 9 a of
93 § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b)
94 volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; or
95 educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding ~~three~~
96 24 times per calendar year as a fundraising activity, the gross proceeds of which are to be used by such
97 church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or
98 religious purposes; (c) churches that serve meals for their members as a regular part of their religious
99 observances; (d) public or private elementary or secondary schools, or public or private colleges and
100 universities, to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing
101 homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes
102 for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted
103 apartment complexes or residences with restaurants, not open to the public, where meals are served and
104 fees are charged for such food and beverages and are included in rental fees.

105 Also, the tax shall not be levied on meals: (a) when used or consumed and paid for by the
106 Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided
107 by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind,
108 handicapped, or needy persons in their homes, or at central locations; or (c) provided by private
109 establishments that contract with the appropriate agency of the Commonwealth to offer food, food
110 products, or beverages for immediate consumption at concession prices to elderly, infirm, blind,
111 handicapped, or needy persons in their homes or at central locations.

112 In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business
113 enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on
114 property acquired and used by the United States for any military or naval purpose shall be required to
115 collect and remit meals taxes.

116 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this
117 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
118 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
119 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
120 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
121 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

122 C. Any city or town that is authorized to levy a tax on admissions may levy the tax on admissions
123 paid for any event held at facilities that are not owned by the city or town at a lower rate than the rate
124 levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums and
125 amphitheatres.
126 D. [Expired.]