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HOUSE BILL NO. 841

Offered January 8, 2014

Prefiled January 8, 2014

A *BILL to amend and reenact §§ 58.1-3819 and 58.1-3840 of the Code of Virginia, relating to local transient occupancy tax.*

Patron—Lewis

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 58.1-3819 and 58.1-3840 of the Code of Virginia are amended and reenacted as follows:**
§ 58.1-3819. Transient occupancy tax.

A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on *publicly or privately owned* hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied; however, Accomack County, Albemarle County, Alleghany County, Amherst County, Augusta County, Bedford County, Botetourt County, Brunswick County, Campbell County, Caroline County, Carroll County, Craig County, Cumberland County, Dickenson County, Dinwiddie County, Floyd County, Franklin County, Giles County, Gloucester County, Grayson County, Greene County, Greensville County, Halifax County, James City County, King George County, Loudoun County, Madison County, Mecklenburg County, Montgomery County, Nelson County, Northampton County, Page County, Patrick County, Prince Edward County, Prince George County, Prince William County, Pulaski County, Rockbridge County, Smyth County, Spotsylvania County, Stafford County, Tazewell County, Washington County, Wise County, Wythe County, and York County may levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with the local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality. If any locality has enacted an additional transient occupancy tax pursuant to subsection C of § 58.1-3823, then the governing body of the locality shall be deemed to have complied with the requirement that it consult with local tourism industry organizations, including lodging properties. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

B. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. In addition, that portion of any tax imposed hereunder in excess of two percent shall not apply to travel campgrounds in Stafford County.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy such a transient occupancy tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, *mutatis mutandis*.

D. Any county, city or town that requires local hotel and motel businesses, or any class thereof, to collect, account for and remit to such locality a local tax imposed on the consumer may allow such businesses a commission for such service in the form of a deduction from the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof at no less than three percent and not to exceed five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount due was delinquent.

E. All transient occupancy tax collections shall be deemed to be held in trust for the county, city or town imposing the tax.

§ 58.1-3840. Certain excise taxes permitted.

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, *publicly or privately owned* transient room rentals, meals, and *publicly or privately owned* travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser

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59 as a mandatory gratuity or service charge added by the restaurant in addition to the sales price of the
60 meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the
61 sales price; or (iii) food and beverages sold through vending machines or on any tangible personal
62 property purchased with food coupons issued by the United States Department of Agriculture under the
63 Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for
64 Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by: (a)
65 restaurants, as such term is defined in subdivision 9 a of § 35.1-1, to their employees as part of their
66 compensation when no charge is made to the employee; (b) volunteer fire departments and rescue
67 squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent
68 organizations, on an occasional basis, not exceeding three times per calendar year as a fundraising
69 activity, the gross proceeds of which are to be used by such church, religious body or organization
70 exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that
71 serve meals for their members as a regular part of their religious observances; (d) public or private
72 elementary or secondary schools, or public or private colleges and universities, to their students or
73 employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care
74 facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm,
75 handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes
76 or residences with restaurants, not open to the public, where meals are served and fees are charged for
77 such food and beverages and are included in rental fees.

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

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

89 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this
90 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
91 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
92 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
93 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
94 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

95 C. Any city or town that is authorized to levy a tax on admissions may levy the tax on admissions
96 paid for any event held at facilities that are not owned by the city or town at a lower rate than the rate
97 levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums and
98 amphitheatres.

99 D. [Expired.]