

DEPARTMENT OF TAXATION

2016 Fiscal Impact Statement

1. **Patron** Peter F. Farrell

3. **Committee** House Finance

4. **Title** Local Food and Beverage and Meals Tax;
Occasional Fundraising Sales by Veteran
Service Organizations

2. **Bill Number** HB 165

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would allow organizations exempt from federal income taxation under *Internal Revenue Code* ("I.R.C.") § 501(c)(19) to make occasional sales of meals and beverages during fundraising events exempt from local meals taxes and local food and beverage taxes if the gross proceeds are used by the entity for fraternal purposes. The exemption would apply to the first three fundraising activities in a calendar year during which meals and beverages are sold, as well as to the first \$100,000 of gross receipts generated by that organization from the fourth and subsequent fundraising sales of meals and beverages in that calendar year.

Under current law, educational, charitable, fraternal or benevolent organizations may make sales of meals and beverages during their first three fundraising events in a calendar year exempt of the local meals tax and local food and beverage tax. In addition, the first \$100,000 of gross receipts generated by that organization from the fourth and from subsequent fundraising sales in that calendar year is also exempt from the tax. In order for the exemption to apply, the proceeds from such sales must be used by the organization exclusively for nonprofit, educational, charitable, benevolent, or religious purposes. Currently, if a qualifying organization uses the gross proceeds generated from the sale of food and beverages at the fundraising event for any other purposes, including, for example, fraternal purposes, the exemption does not apply.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

To the extent that a locality that imposes the local meals tax or local food and beverage tax has one or more I.R.C. § 501(c)(19) organizations engaged in qualifying occasional sales of food and beverages at fundraising events, the locality would experience a decrease in local revenues, the magnitude of which is unknown. According to the Auditor

of Public Accounts, a total of \$465,158,000 in local meals taxes and local food and beverage taxes were collected from the 39 cities, 46 counties, and 36 towns that responded to the APA's survey. The amount of the revenue loss would vary in each locality based on the rate imposed and the gross sales of *I.R.C.* § 501(c)(19) nonprofit entities that elect to engage in occasional fundraising sales of food and beverages.

This bill would have no impact on state revenues.

9. Specific agency or political subdivisions affected:

Localities imposing food and beverage taxes or meals taxes

10. Technical amendment necessary: No.

11. Other comments:

Classification of VSOs as *I.R.C.* § 501(c)(19) Organizations and Activities Conducted

Current law grants an exemption from the federal income tax for *I.R.C.* § 501(c)(19) organizations. Under *I.R.C.* § 501(c)(19), a post or organization of past or present members of the Armed Forces of the United States or an auxiliary unit or society of, or a trust or foundation that meets the following requirements is exempt from federal income taxes: 1) organized in the United States or any of its possessions; 2) at least 75% of the members are past or present members of the Armed Forces and substantially all of the remaining members are cadets, spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and 3) no part of the net earnings inure to the benefit of any private shareholder or individual.

An *I.R.C.* § 501(c)(19) organization must be operated for one or more of the following eight purposes:

- Promotion of the social welfare of the community;
- Assisting disabled and needy war veterans and members of the U.S. Armed Forces and their dependents, and the widows and orphans of deceased veterans;
- Providing entertainment, care, and assistance to hospitalized veterans or members of the U.S. Armed Forces;
- Carrying on programs to perpetuate the memory of deceased veterans and members of the Armed Forces, and to comfort their survivors;
- Conducting programs for religious, charitable, scientific, literary or educational purposes;
- Sponsoring or participating in patriotic activities;
- Providing insurance benefits to members or members' dependents, or
- Providing social and recreational activities for members.

Organizations classified under *I.R.C.* § 501(c)(19) may conduct social and recreational activities without jeopardizing their federal tax-exempt status if the activities are conducted with post members. Such activities may include operating bars and restaurants,

gambling, and holding dinners and dances. None of these activities serve an educational, charitable, benevolent or religious purpose.

County Food and Beverage Tax

Every county is authorized to levy a tax on food and beverages sold for human consumption, by a restaurant at a maximum rate of four percent of the amount charged for such food and beverages. The tax must not be levied on food and beverages sold: i) through vending machines; or by: ii) boardinghouses that do not accommodate transients; iii) cafeterias operated by industrial plants for employees; iv) nonprofit cafeterias in public schools; v) hospitals, nursing homes, medical clinics, convalescent homes; vi) day care centers; vii) home for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; and viii) age-restricted apartment complexes. The tax also may not be levied on i) discretionary gratuities; ii) mandatory gratuities and service charges that do not exceed 20% of the sales price; and iii) alcoholic beverages sold in factory sealed containers. The tax does apply to prepared foods ready for human consumption sold at grocery stores and convenience stores.

As of 2014, 47 counties imposed the food and beverage tax. With the exception of Dickinson County, every county imposed the tax at the maximum rate.

City Meals Tax

Currently, any city or town having general taxing powers as established by charter may impose a local meals tax through the adoption of an ordinance by the local governing body. The tax does not apply to: 1) discretionary gratuities paid in addition to the sales price of the meal; 2) mandatory gratuities, to the extent they do not exceed 20% of the sales price; 3) food and beverages sold through vending machines; or 4) food and beverages purchased with food coupons or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. Similarly, the tax does not apply when food is sold or provided by: 1) restaurants as employee meals, considered compensation; 2) churches regularly serving meals for their members; 3) public or private elementary, secondary schools, colleges, and universities, to their students or employees; 4) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents; 5) day care centers; 6) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; and 7) 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.

As of 2014, all Virginia cities and 104 towns imposed a meals tax, with the median rate being 6% and 5% respectively.

Occasional Fundraising Sale Exemption for Certain Organizations

In addition to the organizations exempted above, volunteer fire departments, volunteer rescue squads, nonprofit churches and religious bodies, and educational, charitable, fraternal or benevolent organizations are not required to collect food and beverage taxes or local meals taxes on occasional sales of meals and beverages made during fundraising activities. In order for the exemption to apply, the qualifying entity must use the gross

proceeds generated from such sales exclusively for nonprofit educational, charitable, benevolent or religious purposes.

The exemption is available for the first three fundraising events that a qualifying organization holds during a calendar year. Beginning with the fourth fundraising activity of the calendar year, the organization is exempt only on the first \$100,000 of gross receipts from sales of food and beverages during the calendar year. For purposes of determining whether the \$100,000 gross receipts threshold is exceeded, gross receipts do not include receipts from the first three fundraising sales conducted in a calendar year.

While this exemption is available to fraternal organizations, under current law, the exemption is not applicable if a qualifying nonprofit organization uses the gross proceeds generated from the fundraising activities for fraternal purposes, or for other purposes that are not educational, charitable, benevolent or religious.

Proposal

This bill would allow organizations exempt from federal income taxation under *I.R.C.* § 501(c)(19) to make occasional sales of meals and beverages during fundraising events exempt from local meals taxes and local food and beverage taxes if the gross proceeds are used by the entity for fraternal purposes. The exemption would apply during the first three fundraising activities in which meals and beverages are sold in a calendar year, as well as to the first \$100,000 of gross receipts generated by that organization from the fourth and from subsequent fundraising sales of meals and beverages in that calendar year.

The effective date of this bill is not specified.

Similar Legislation

House Bill 21 would exempt nonprofit § 501(c)(19) veteran service organizations from Retail Sales and Use Taxes.

House Bill 63 and **Senate Bill 533** (identical) would exempt nonprofit § 501(c)(19) veteran service organizations from Retail Sales and Use Taxes and local licenses taxes.

cc : Secretary of Finance

Date: 1/16/2016 KP
DLAS File Name: HB165F161