

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact § 58.1-609.11 of the Code of Virginia, relating to retail sales and use tax exemption; nonprofits; limited liability companies.*

[H 1950]

Approved

**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. For purposes of this section, "nonprofit organization" or "nonprofit entity" means an entity that meets the requirements of subsection D. "Nonprofit organization" or "nonprofit entity" includes a single member limited liability company whose sole member is a nonprofit organization.*

*B. 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 ~~B~~ *G*, each entity must follow the procedures set forth in subsection ~~B~~ *C* and meet the criteria set forth in subsection ~~C~~ *D*. 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~~ *C* and meets the criteria set forth in subsection ~~C~~ *D*. 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~~ *C* and meets the criteria set forth in subsection ~~C~~ *D*.*

~~B- C.~~ *1. On and after July 1, 2004, in addition to the organizations described in subsection ~~A~~ *B*, and except as restricted in subdivision 2, 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.*

*2. If the entity that is exempt under this section is exempt from federal income tax under § 501(c)(19) of the Internal Revenue Code, or has annual gross receipts of less than \$5,000 and is organized for at least one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code, then the exemption under this section for such entity shall not apply to purchases of tangible personal property that are used primarily (i) for social and recreational activities for members or (ii) for providing insurance benefits to members or members' dependents.*

~~C- D.~~ *To qualify for the exemption under subsection ~~B~~ *C*, 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; (ii) under § 501(c)(4) of the Internal Revenue Code and is organized for a charitable purpose; or (iii) under § 501(c)(19) of the Internal Revenue Code; or*

*b. The entity has annual gross receipts of 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, one of the charitable purposes set forth in § 501(c)(4) of the Internal Revenue Code, or one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code; and*

*2. The entity is in compliance with all applicable state solicitation laws; and, where applicable,*

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57 provides appropriate verification of such compliance; and

58 3. The entity's annual general administrative costs, including salaries and fundraising, relative to its  
59 annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

60 4. If the entity's gross annual revenue was at least \$750,000 in the previous year, then the entity  
61 must provide a financial review performed by an independent certified public accountant. However, for  
62 any entity with gross annual revenue of at least \$1 million in the previous year, the Department may  
63 require that the entity provide a financial audit performed by an independent certified public accountant.  
64 If the Department specifically requires an entity with gross annual revenue of at least \$1 million in the  
65 previous year to provide a financial audit performed by an independent certified public accountant, then  
66 the entity shall provide such audit in order to qualify for the exemption under this section, which audit  
67 shall be in lieu of the financial review; and

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

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

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

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

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

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

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

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