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## HOUSE BILL NO. 317

Offered January 8, 2020

Prefiled December 31, 2019

*A BILL to amend and reenact § 58.1-3833 of the Code of Virginia, relating to county food and beverage tax; maximum rate.*

\_\_\_\_\_  
Patron—Gooditis

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That § 58.1-3833 of the Code of Virginia is amended and reenacted as follows:****§ 58.1-3833. County food and beverage tax.**

A. 1. 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 § 35.1-1, ~~not to exceed four percent of the amount charged for such food and beverages.~~ *Any tax levied pursuant to this section shall be imposed at a rate not to exceed (i) the rate imposed by an adjoining city located in the Commonwealth, if such rate is greater than four percent at the time the county imposes its rate, or (ii) four percent.* Such tax shall not be levied on food and beverages sold through vending machines or by ~~(i) (a)~~ boardinghouses that do not accommodate transients; ~~(ii) (b)~~ cafeterias operated by industrial plants for employees only; ~~(iii) (c)~~ restaurants to their employees as part of their compensation when no charge is made to the employee; ~~(iv) (d)~~ volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), 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) (e)~~ churches that serve meals for their members as a regular part of their religious observances; ~~(vi) (f)~~ public or private elementary or secondary schools or institutions of higher education to their students or employees; ~~(vii) (g)~~ hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; ~~(viii) (h)~~ day care centers; ~~(ix) (i)~~ homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or ~~(x) (j)~~ 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) (1)~~ when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or ~~(b) (2)~~ 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) (3)~~ 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.

2. 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.

3. 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. However, no referendum initiated by a resolution of the board of supervisors shall be authorized in a county in the three calendar years subsequent to the electoral defeat of any referendum held pursuant to this section in 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.

4. Any referendum held for the purpose of approving a county food and beverage tax pursuant to

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59 this section shall, in the language of the ballot question presented to voters, contain the following text in  
60 a paragraph unto itself: "If this food and beverage tax is adopted and a maximum tax rate of four  
61 percent is imposed, then the total tax imposed on all prepared food and beverage shall be ..." followed  
62 by the total, expressed as a percentage, of all existing ad valorem taxes applicable to the transaction  
63 added to the four percent county food and beverage tax to be approved by the referendum.

64 5. Notwithstanding any other provision of this section, if a county that has not imposed a county  
65 food and beverage tax adopts an ordinance or resolution pursuant to subdivision 1 of § 15.2-2607  
66 providing for the payment of the principal and premium, if any, and interest on bonds issued in  
67 accordance with the Public Finance Act (§ 15.2-2600 et seq.) from revenue collected from a county food  
68 and beverage tax, then the ballot may provide, as a single question:

69 a. The purpose or purposes of the bonds to be issued;

70 b. The estimated maximum amount of such bonds proposed in the notice required in subsection A of  
71 § 15.2-2606;

72 c. The request for approval by the voters of a county food and beverage tax authorized and levied in  
73 accordance with subdivision 3;

74 d. The language required to be included in the ballot question as set forth in subdivision 4; and

75 e. An explanation that the bonds shall be issued only if the county food and beverage tax is  
76 approved in the referendum.

77 Any referendum placed on the ballot pursuant to this subdivision 5 shall be submitted according to  
78 the procedures specified in § 24.2-684.

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

83 B. Notwithstanding the provisions of subsection A, Roanoke County, Rockbridge County, Frederick  
84 County, Arlington County, and Montgomery County are hereby authorized to levy a tax on food and  
85 beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as  
86 modified in subsection A and subject to the same exemptions, not to exceed four percent of the amount  
87 charged for such food and beverages, provided that the governing body of the respective county holds a  
88 public hearing before adopting a local food and beverage tax, and the governing body by unanimous  
89 vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as  
90 the governing body may by ordinance prescribe.

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

97 D. No county which has heretofore adopted an ordinance pursuant to subsection A shall be required  
98 to submit an amendment to its meals tax ordinance to the voters in a referendum.

99 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this  
100 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition  
101 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or  
102 service charge added by the restaurant in addition to the sales price, but only to the extent that such  
103 mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) alcoholic  
104 beverages sold in factory sealed containers and purchased for off-premises consumption or food  
105 purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C.  
106 § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items:  
107 sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily  
108 of an assortment of vegetables, and nonfactory sealed beverages.