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HOUSE BILL NO. 2688

Offered January 21, 1999

A BILL to amend and reenact §§ 58.1-3700.1, 58.1-3703, 58.1-3708 and 58.1-3709 of the Code of Virginia and to repeal §§ 58.1-3701, 58.1-3704, 58.1-3706, 58.1-3710, 58.1-3714 through 58.1-3724, and 58.1-3726 through 58.1-3735 of the Code of Virginia, relating to the business, professional and occupation license tax.

Patrons—Davis, Drake, Hamilton, Ingram and Morgan

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3700.1, 58.1-3703, 58.1-3708 and 58.1-3709 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3700.1. Definitions.

For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless otherwise required by the context:

"Affiliated group" means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

b. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business:

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60 (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or
 61 (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or
 62 business.

63 "Definite place of business" means an office or a location at which occurs a regular and continuous
 64 course of dealing for thirty consecutive days or more. A definite place of business for a person engaged
 65 in business may include a location leased or otherwise obtained from another person on a temporary or
 66 seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite
 67 place of business if there is no definite place of business maintained elsewhere and the person is not
 68 subject to licensure as a peddler or itinerant merchant.

69 "Financial services" means the buying, selling, handling, managing, investing, and providing of
 70 advice regarding money, credit, securities, or other investments.

71 "Gross receipts" means the whole, entire, total receipts, without deduction.

72 "License fee" means the fee required to be paid by every business within a locality imposing the fee
 73 and may be referred to as a license tax.

74 "License year" means the calendar year for which a license is issued for the privilege of engaging in
 75 business.

76 "Professional services" means services performed by architects, attorneys-at-law, certified public
 77 accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing
 78 arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of
 79 human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and
 80 no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to
 81 § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed
 82 knowledge of some department of science or learning, gained by a prolonged course of specialized
 83 instruction and study, is used in its practical application to the affairs of others, either advising, guiding,
 84 or teaching them, and in serving their interests or welfare in the practice of an art or science founded on
 85 it. The word "profession" implies attainments in professional knowledge as distinguished from mere
 86 skill, and the application of knowledge to uses for others rather than for personal profit.

87 "Purchases" means all goods, wares and merchandise received for sale at each definite place of
 88 business of a wholesale merchant. The term shall also include the cost of manufacture of all goods,
 89 wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A
 90 wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares
 91 and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of
 92 manufacture.

93 "Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or
 94 appraisal of real property.

95 § 58.1-3703. Counties, cities and towns may impose local license fees; limitation of authority.

96 A. The governing body of any county, city or town may charge a fee for issuing a license in an
 97 amount not to exceed \$100 for any locality with a population greater than 50,000, fifty dollars for any
 98 locality with a population of 25,000 but no more than 50,000 and thirty dollars for any locality with a
 99 population smaller than 25,000. Such governing body and may levy and provide for the assessment and
 100 collection of county, city or town license taxes such fee on businesses, trades, professions, occupations
 101 and callings and upon the persons, firms and corporations engaged therein within the county, city or
 102 town subject to the limitations in (i) subsection B of this section and (ii) subsection A of § 58.1-3706,
 103 provided such tax shall not be assessed and collected on any amount of gross receipts of each business
 104 upon which a license fee is charged. Any county, city or town with a population greater than 50,000
 105 shall reduce the fee to an amount not to exceed fifty dollars by January 1, 2000. The ordinance
 106 imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

107 B. Any county, city or town by ordinance may exempt in whole or in part from the license tax the
 108 design, development or other creation of computer software for lease, sale or license, which imposes a
 109 license fee shall impose such fee on the business' gross receipts in accordance with the following:

111 Gross Receipts	Maximum fee allowed
112	
113 \$0--\$100,000	\$ 25.00
114	
115 \$100,001-\$250,000	\$ 50.00
116	
117 \$250,001-\$500,000	\$ 150.00
118	
119 \$500,001-\$1,000,000	\$ 500.00
120	

\$1,000,001-\$5,000,000

\$1,000.00

\$5,000,001 and over

\$2,500.00

C. No county, city, or town shall impose a license fee or levy any license tax:

1. On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by other provisions of law;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

8. [Repealed.]

9. On or measured by receipts for management, accounting, or administrative services provided on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by a corporation which is a member of an affiliated group of corporations from other members of the same affiliated group. This exclusion shall not exempt affiliated corporations from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated corporation on those sales by the affiliated corporation to a nonaffiliated person, company, or corporation, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated corporation. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated person, company, or corporation. As used in this subdivision, the term "sales by the affiliated corporation to a nonaffiliated person, company or corporation" means sales by the affiliated corporation to a nonaffiliated person, company or corporation where goods sold by the affiliated corporation or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated person, company or corporation;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped, or a nominee of the Department, as set forth in § 63.1-164;

15. [Expired.]

16. [Repealed.]

17. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;

18. (a) On or measured by receipts of a charitable nonprofit organization except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 514 et seq. For the purpose of this subdivision, "charitable nonprofit organization" means an organization which is described in Internal Revenue Code § 501 (c) (3) and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning.

(b) On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations; or

19. On any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located provided the locality is otherwise authorized to tax such businesses and rental of real estate.

§ 58.1-3708. Situs for local license taxation of businesses.

A. Except as otherwise provided by law and except as to public service corporations, the situs for the local license taxation for any business, profession, trade, occupation or calling subject to licensure, shall be the county, city or town (hereinafter called "locality") in which the person so engaged has a definite place of business. If any such person has a definite place of business in any other locality, then such other locality may impose a license tax on him, provided such other locality is otherwise authorized to impose a local license tax with respect thereto.

B. Where a local license tax imposed by any locality is measured by volume, the volume on which the tax may be computed shall be the volume attributable to all definite places of business of the business, profession, trade, occupation or calling in such locality. All volume attributable to any definite places of business of the business, profession, trade, occupation or calling in any other locality shall be deductible from the base in computing any local license tax measured by volume imposed on ~~him~~ *the person engaged in the business* by the locality in which the first-mentioned definite place is located.

C. The word "volume," as used in this section, means gross receipts, sales, purchases, or other base for measuring a license tax which is related to the amount of business done.

D. This section shall not be construed as prohibiting any locality from requiring a separate license for each definite place of business located in such locality.

§ 58.1-3709. Business located in more than one jurisdiction.

A. In any case where a business subject to a local license tax is located partially within a county, city or town and partially within another county, city or town by reason of the boundary line between such political subdivisions passing through such place of business, the situs for the local license of such business shall be each county, city or town in which any part of such place of business is located. If a local license tax is measured by the volume of business done, the volume allocable to each political subdivision for measuring the local license tax levied by it shall be such proportion of the total volume of business done at such place of business as the area within that political subdivision, which such place of business actually occupies and actively uses in connection with such business, bears to the total area which such place of business actually occupies and actively uses in connection with such business. And in every such case, if a local license tax is a flat tax, the amount thereof of the tax shall be adjusted so as to constitute such proportion of the entire flat license tax levied by the political subdivision as the area within that political subdivision, which such place of business actually occupies and actively uses in connection with such business, bears to the total area which such place of business actually occupies and actively uses in connection with such business. The word "area," as used in this section, means the area of the land actually occupied by the building or structure constituting the place of business; but if such place of business actually occupies and actively uses only a part of such building or structure, the land area below such part shall be the land area which shall be used in making the apportionment, whether or not such building or structure contains one story or floor or more than one story or floor. If the place of business is of such nature that inventories are kept or stored outside of a building or structure, then the land area used in keeping or storing such inventories, together with the land area actually occupied by any building or structure, or part thereof, which is actually occupied and actively used in connection with such business shall constitute the land area for making the apportionment. If the place of business has a parking area contiguous thereto for the use of its vehicles or those of its customers to the exclusion of any other business, such area shall be included in the word "area" as used in this section. If

the place of business has a contiguous parking area used in common with other places of business, such parking area shall be apportioned for the purpose of this section among such places of business in the ratio of their total areas to the whole parking area, and the area so apportioned shall be included within the word "area" as used in this section.

B. Any person whose place of business comes within the provisions of subsection A of this section and who considers himself aggrieved by the imposition upon him of a local license tax, may, at any time during the license year, apply for relief to any court of record having jurisdiction in any county or city involved, and the court shall issue against each such county or city a rule to show cause why relief should not be granted. The rule shall be served on the attorney for the Commonwealth for the county or on the city attorney for the city, as the case may be. The court shall hear the case without a jury and shall render judgment declaring the proper tax to be paid, and granting such relief as may be proper. In any case where the court finds that the tax imposed was excessive, no costs shall be awarded against the taxpayer, nor shall he be liable for penalty or interest on such tax if he pays the tax before the expiration of fifteen days after final judgment.

2. That the Department of Taxation, with the assistance of the Virginia Municipal League, the Virginia Association of Counties and any business organization or organizations which the Department of Taxation selects, shall review the provisions of the first enactment of this act and their effects beginning July 1, 2003, and shall make recommendations concerning their findings to the 2004 General Assembly.

3. That §§ 58.1-3701, 58.1-3704, 58.1-3706, 58.1-3710, 58.1-3714 through 58.1-3724 and 58.1-3726 through 58.1-3735 of the Code of Virginia are repealed.

4. That the provisions of this act shall become effective on January 1, 2000.