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HOUSE BILL NO. 152

Offered January 12, 2022

Prefiled January 9, 2022

A *BILL to amend and reenact §§ 58.1-3833 and 58.1-3840 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-609.15, relating to sales and use tax; payment card processing fees.*

Patron—March

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3833 and 58.1-3840 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-609.15 as follows:

§ 58.1-609.15. Exemption for payment card processing fees.

A. *For purposes of this section:*

"Electronic payment transaction" means a transaction in which a person uses a debit card, credit card, or other payment code or device issued or approved through a payment card network to debit a deposit account or use a line of credit, whether authorization is based on a signature, personal identification number, or other means.

"Payment card processing fee" means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.

"Payment card network" means an entity that (i) directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that routes information and data to conduct debit card or credit card transaction authorization, clearance, and settlement and (ii) a merchant or seller uses in order to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions;

B. *The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the portion of any taxable transaction that constitutes a payment card processing fee.*

§ 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 six percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) 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) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools or institutions of higher education to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; (x) 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; or (xi) sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500. For the exemption described in clause (xi), the sellers' annual income shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (b) 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) 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

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59 locations.

60 2. Grocery stores and convenience stores selling prepared foods ready for human consumption at a
61 delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store
62 selling such items.

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

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

73 C. Notwithstanding any other provision of this section, no locality shall levy any tax under this
74 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition
75 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or
76 service charge added by the restaurant in addition to the sales price, but only to the extent that such
77 mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) alcoholic
78 beverages sold in factory sealed containers and purchased for off-premises consumption or food
79 purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C.
80 § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items:
81 sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily
82 of an assortment of vegetables, and nonfactory sealed beverages.

83 *D. Notwithstanding any other provision of this section, no locality shall levy any tax under this*
84 *section upon the portion of any taxable transaction that constitutes a payment card processing fee. For*
85 *purposes of this section, "payment card processing fee" means the same as that term is defined in*
86 *§ 58.1-609.15.*

87 **§ 58.1-3840. Certain excise taxes permitted.**

88 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or town
89 having general taxing powers established by charter pursuant to or consistent with the provisions of §
90 15.2-1104 and, to the extent authorized in this chapter, any county may impose excise taxes on
91 cigarettes, admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals
92 may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in
93 addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a
94 mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal,
95 but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the
96 sales price; or (iii) food and beverages sold through vending machines or on any tangible personal
97 property purchased with food coupons issued by the United States Department of Agriculture under the
98 Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for
99 Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by (a)
100 restaurants, as such term is defined in § 35.1-1, to their employees as part of their compensation when
101 no charge is made to the employee; (b) volunteer fire departments and volunteer emergency medical
102 services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or
103 benevolent organizations, the first three times per calendar year and, beginning with the fourth time, on
104 the first \$100,000 of gross receipts per calendar year from sales of meals (excluding gross receipts from
105 the first three times), as a fundraising activity, the gross proceeds of which are to be used by such
106 church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or
107 religious purposes; (c) churches that serve meals for their members as a regular part of their religious
108 observances; (d) public or private elementary or secondary schools or institutions of higher education to
109 their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other
110 extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged,
111 infirm, handicapped, battered women, narcotic addicts, or alcoholics; (h) age-restricted apartment
112 complexes or residences with restaurants, not open to the public, where meals are served and fees are
113 charged for such food and beverages and are included in rental fees; or (i) sellers at local farmers
114 markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500.
115 For the exemption described in clause (i), the sellers' annual income shall include income from sales at
116 all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the
117 tax.

118 Also, the tax shall not be levied on meals: (1) when used or consumed and paid for by the
119 Commonwealth, any political subdivision of the Commonwealth, or the United States; (2) provided by a
120 public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped,

or needy persons in their homes, or at central locations; or (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.

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

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

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

~~D. [Expired.]~~ *Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon the portion of any taxable transaction that constitutes a payment card processing fee. For purposes of this section, "payment card processing fee" means the same as that term is defined in § 58.1-609.15.*