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HOUSE BILL NO. 2004

Offered January 13, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 58.1-3833 and 58.1-3840 of the Code of Virginia, relating to local meals and food and beverage taxes; maximum rate.

Patron—McNamara

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 as follows:

§ 58.1-3833. Local 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. The rate of such tax shall not exceed the amounts authorized by subdivision 3. 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 aged or infirm individuals, individuals with disabilities, 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, or needy individuals or individuals with blindness or other disabilities 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, or needy individuals or individuals with blindness or other disabilities 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. a. Prior to January 1, 2028, the rate of the tax on food and beverages sold shall not exceed six percent.

b. (1) Beginning January 1, 2028, the rate of the tax imposed by any county on food and beverages sold shall not exceed four percent, unless authorization to impose a rate above four percent but no more than six percent is approved in a referendum as described in subdivision (2).

(2) A county may impose a rate in excess of four percent if authorization for such rate is approved in a referendum. However, in no event shall the rate of such tax exceed six percent. The referendum shall be held in accordance with § 24.2-684 and initiated either by a resolution of the local governing body 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 locality, as appropriate on January 1 of the year in which the petition is filed with the circuit court of 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 approve the referendum, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

(3) Any referendum held for the purpose of approving a food and beverage tax in excess of four percent shall, in the language of the ballot question presented to voters, contain the following text in a paragraph

59 *unto itself: "If this food and beverage tax is adopted and the maximum tax rate is imposed, then the total tax*
 60 *imposed on all prepared food and beverages shall be . . ." followed by the total, expressed as a percentage, of*
 61 *all existing ad valorem taxes applicable to the transaction added to the county food and beverage tax to be*
 62 *approved by the referendum.*

63 *Any referendum placed on the ballot pursuant to this subdivision b shall be submitted according to the*
 64 *procedures specified in § 24.2-684.*

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

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

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

85 **§ 58.1-3840. Certain excise taxes permitted.**

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

115 Also, the tax shall not be levied on meals: (1) when used or consumed and paid for by the
 116 Commonwealth, any political subdivision of the Commonwealth, or the United States; (2) provided by a
 117 public or private nonprofit charitable organization or establishment to elderly, infirm, or needy individuals or
 118 individuals with blindness or other disabilities in their homes or at central locations; or (3) provided by
 119 private establishments that contract with the appropriate agency of the Commonwealth to offer food, food

120 products, or beverages for immediate consumption at concession prices to elderly, infirm, or needy
121 individuals or individuals with blindness or other disabilities in their homes or at central locations.

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

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

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

135 D. Expired.

136 *E. 1. Beginning January 1, 2028, the rate of the tax imposed by any city or town on meals shall not exceed*
137 *four percent, unless authorization to impose a rate above four percent but no more than six percent is*
138 *approved in a referendum as described in subdivision 2.*

139 *2. A city or town may impose a rate in excess of four percent if authorization for such rate is approved in*
140 *a referendum. However, in no event shall the rate of such tax exceed six percent. The referendum shall be*
141 *held in accordance with § 24.2-684 and initiated either by a resolution of the local governing body or on the*
142 *filing of a petition signed by a number of registered voters of the city or town equal in number to 10 percent*
143 *of the number of voters registered in the city or town, as appropriate on January 1 of the year in which the*
144 *petition is filed with the circuit court of such city or town. The clerk of the circuit court shall publish notice of*
145 *the election in a newspaper of general circulation in the city or town once a week for three consecutive weeks*
146 *prior to the election. If the voters approve the referendum, the tax shall be effective in an amount and on such*
147 *terms as the governing body may by ordinance prescribe.*

148 *3. Any referendum held for the purpose of approving a meals tax in excess of four percent shall, in the*
149 *language of the ballot question presented to voters, contain the following text in a paragraph unto itself: "If*
150 *this meals tax is adopted and the maximum tax rate is imposed, then the total tax imposed on all prepared*
151 *food and beverage shall be . . ." followed by the total, expressed as a percentage, of all existing ad valorem*
152 *taxes applicable to the transaction added to the meals tax to be approved by the referendum.*

153 *4. The maximum rate of any meals tax imposed by a town on or after January 1, 2028, shall be limited by*
154 *the amount of any food and beverage tax imposed by the county in which the town is located. No town shall*
155 *impose a rate of meals tax pursuant to this subsection if the rate of such tax, when added to the county food*
156 *and beverage tax rate, exceeds the limits provided by this subsection.*

157 *5. Any referendum placed on the ballot pursuant to this subsection shall be submitted according to the*
158 *procedures specified in § 24.2-684.*