

HOUSE BILL NO. 152

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate March)

A BILL to amend and reenact §§ 58.1-3818, 58.1-3819, 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 local taxes; payment card processing fees.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-3818, 58.1-3819, 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. Additional discount 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 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.

"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.

27 B. In addition to the discount allowed pursuant to § 58.1-622 or any other provision of law, a dealer  
28 holding a certificate of registration under § 58.1-613 and responsible for accounting for and remitting the  
29 taxes levied by this chapter shall be allowed a discount for the amount of payment card processing fees  
30 paid by the dealer to a payment card network provider on the amount of taxes imposed by this chapter on  
31 any taxable transaction, which shall be accounted for in the form of a deduction in submitting his return  
32 and paying the amount due by him.

33 **§ 58.1-3818. Admissions tax in counties.**

34 A. Any county, except as provided in subsection C, is hereby authorized to levy a tax on admissions  
35 charged for attendance at any event. The tax shall not exceed 10 percent of the amount of charge for  
36 admission to any such event. Notwithstanding any other provisions of law, the governing bodies of such  
37 counties shall prescribe by ordinance the terms, conditions, and amount of such tax and may classify  
38 between events conducted for charitable purposes and events conducted for noncharitable purposes.

39 B. Notwithstanding the provisions of subsection A, localities may, by ordinance, elect not to levy  
40 an admissions tax on admission to an event, provided that the purpose of the event is solely to raise money  
41 for charitable purposes and that the net proceeds derived from the event will be transferred to an entity or  
42 entities that are exempt from sales and use tax pursuant to § 58.1-609.11.

43 C. No tax under this section shall be authorized in any county in which a state sales and use tax,  
44 in addition to the taxes authorized pursuant to §§ 58.1-603 and 58.1-604, is imposed at a rate of at least  
45 one percent, a portion of which is dedicated to the promotion of tourism.

46 D. Notwithstanding any other provision of this section, a locality shall allow a taxpayer responsible  
47 for collecting and remitting the tax imposed by this section a discount in the amount of tax owed equal to  
48 the amount of payment card processing fees paid to a payment card network provider by the taxpayer on  
49 the amount of taxes imposed by this section on any taxable transaction, which shall be accounted for in  
50 the form of a deduction in submitting his return and paying the amount due by him.

51 **§ 58.1-3819. Transient occupancy tax.**

52 A. 1. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels,  
53 boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous

54 occupancy for fewer than 30 consecutive days. The tax shall be imposed on the total price paid by the  
55 customer for the use or possession of the room or space occupied in a retail sale. Such tax shall be in such  
56 amount and on such terms as the governing body may, by ordinance, prescribe.

57 2. Unless otherwise provided in this article, any county that imposes a transient occupancy tax at  
58 a rate greater than two percent shall, by ordinance, provide that (i) any excess from a rate over two percent  
59 shall be designated and spent solely for such purpose as was authorized under this article prior to January  
60 1, 2020, or (ii) if clause (i) is inapplicable, any excess from a rate over two percent but not exceeding five  
61 percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that,  
62 as determined after consultation with the local tourism industry organizations, including representatives  
63 of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging  
64 properties, and generate tourism revenues in the locality. Unless otherwise provided in this article, for any  
65 county that imposes a transient occupancy tax pursuant to this section or an additional transient occupancy  
66 tax pursuant to another provision of this article, any excess over five percent, combining the rates of all  
67 taxes imposed pursuant to this article, shall not be restricted in its use and may be spent in the same manner  
68 as general revenues. If any locality has enacted an additional transient occupancy tax pursuant to  
69 subsection C of § 58.1-3823, then the governing body of the locality shall be deemed to have complied  
70 with the requirement that it consult with local tourism industry organizations, including lodging properties.  
71 If there are no local tourism industry organizations in the locality, the governing body shall hold a public  
72 hearing prior to making any determination relating to how to attract travelers to the locality and generate  
73 tourism revenues in the locality.

74 B. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied  
75 by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding houses,  
76 travel campgrounds, and other facilities offering guest rooms. In addition, that portion of any tax imposed  
77 hereunder in excess of two percent shall not apply to travel campgrounds in Stafford County.

78 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or  
79 town to levy such a transient occupancy tax. The county tax limitations imposed pursuant to § 58.1-3711  
80 shall apply to any tax levied under this section, mutatis mutandis.

81 D. Any county, city or town that requires local hotel and motel businesses, or any class thereof, to  
82 collect, account for and remit to such locality a local tax imposed on the consumer may allow such  
83 businesses a commission for such service in the form of a deduction from the tax remitted. Such  
84 commission shall be provided for by ordinance, which shall set the rate thereof at no less than three percent  
85 and not to exceed five percent of the amount of tax due and accounted for. No commission shall be allowed  
86 if the amount due was delinquent.

87 E. All transient occupancy tax collections shall be deemed to be held in trust for the county, city  
88 or town imposing the tax.

89 F. Notwithstanding any other provision of this section, a locality shall allow a taxpayer responsible  
90 for collecting and remitting any taxes imposed pursuant to this article a discount in the amount of taxes  
91 owed equal to the amount of payment card processing fees paid to a payment card network provider by  
92 the taxpayer on the amount of taxes imposed by this article on any taxable transaction, which shall be  
93 accounted for in the form of a deduction in submitting his return and paying the amount due by him.

94 **§ 58.1-3833. County food and beverage tax.**

95 A. 1. Any county is hereby authorized to levy a tax on food and beverages sold, for human  
96 consumption, by a restaurant, as such term is defined in § 35.1-1, not to exceed six percent of the amount  
97 charged for such food and beverages. Such tax shall not be levied on food and beverages sold through  
98 vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated  
99 by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation  
100 when no charge is made to the employee; (iv) volunteer fire departments and volunteer emergency medical  
101 services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or  
102 benevolent organizations the first three times per calendar year and, beginning with the fourth time, on  
103 the first \$100,000 of gross receipts per calendar year from sales of food and beverages (excluding gross  
104 receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by  
105 such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent,  
106 or religious purposes; (v) churches that serve meals for their members as a regular part of their religious  
107 observances; (vi) public or private elementary or secondary schools or institutions of higher education to

108 their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other  
109 extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged,  
110 infirm, handicapped, battered women, narcotic addicts, or alcoholics; (x) age-restricted apartment  
111 complexes or residences with restaurants, not open to the public, where meals are served and fees are  
112 charged for such food and beverages and are included in rental fees; or (xi) sellers at local farmers markets  
113 and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500. For the  
114 exemption described in clause (xi), the sellers' annual income shall include income from sales at all local  
115 farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax. Also,  
116 the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the  
117 Commonwealth, any political subdivision of the Commonwealth, or the United States; (b) provided by a  
118 public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped,  
119 or needy persons in their homes, or at central locations; or (c) provided by private establishments that  
120 contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for  
121 immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in  
122 their homes or at central locations.

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

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

130           B. Nothing herein contained shall affect any authority heretofore granted to any county, city, or  
131 town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any  
132 tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax  
133 collections shall be deemed to be held in trust for the county, city, or town imposing the applicable tax.

134 The wrongful and fraudulent use of such collections other than remittance of the same as provided by law  
135 shall constitute embezzlement pursuant to § 18.2-111.

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

146 D. Notwithstanding any other provision of this section, a locality shall allow a taxpayer responsible  
147 for collecting and remitting the tax imposed by this section a discount in the amount of tax owed equal to  
148 the amount of payment card processing fees paid to a payment card network provider by the taxpayer on  
149 the amount of taxes imposed by this section on any taxable transaction, which shall be accounted for in  
150 the form of a deduction in submitting his return and paying the amount due by him.

151 **§ 58.1-3840. Certain excise taxes permitted.**

152 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) to the contrary notwithstanding, any city or  
153 town having general taxing powers established by charter pursuant to or consistent with the provisions of  
154 § 15.2-1104 and, to the extent authorized in this chapter, any county may impose excise taxes on cigarettes,  
155 admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals may be  
156 imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to  
157 the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity  
158 or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent  
159 that such mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) food  
160 and beverages sold through vending machines or on any tangible personal property purchased with food

161 coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts  
162 issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. No  
163 such taxes on meals may be imposed when sold or provided by (a) restaurants, as such term is defined in  
164 § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b)  
165 volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or  
166 other religious bodies; or educational, charitable, fraternal, or benevolent organizations, the first three  
167 times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per  
168 calendar year from sales of meals (excluding gross receipts from the first three times), as a fundraising  
169 activity, the gross proceeds of which are to be used by such church, religious body or organization  
170 exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that serve  
171 meals for their members as a regular part of their religious observances; (d) public or private elementary  
172 or secondary schools or institutions of higher education to their students or employees; (e) hospitals,  
173 medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or  
174 residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women,  
175 narcotic addicts, or alcoholics; (h) age-restricted apartment complexes or residences with restaurants, not  
176 open to the public, where meals are served and fees are charged for such food and beverages and are  
177 included in rental fees; or (i) sellers at local farmers markets and roadside stands, when such sellers' annual  
178 income from such sales does not exceed \$2,500. For the exemption described in clause (i), the sellers'  
179 annual income shall include income from sales at all local farmers markets and roadside stands, not just  
180 those sales occurring in the locality imposing the tax.

181         Also, the tax shall not be levied on meals: (1) when used or consumed and paid for by the  
182 Commonwealth, any political subdivision of the Commonwealth, or the United States; (2) provided by a  
183 public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped,  
184 or needy persons in their homes, or at central locations; or (3) provided by private establishments that  
185 contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for  
186 immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in  
187 their homes or at central locations.

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

192 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under  
193 this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises  
194 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of  
195 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the  
196 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads  
197 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

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

202 D. ~~Expired.~~ Notwithstanding any other provision of this section, a locality shall allow a taxpayer  
203 responsible for collecting and remitting the taxes on admissions, transient room rentals, meals, and travel  
204 campgrounds imposed pursuant to this section a discount in the amount of tax owed equal to the amount  
205 of payment card processing fees paid to a payment card network provider by the taxpayer on the amount  
206 of taxes imposed by this section on any taxable transaction, which shall be accounted for in the form of a  
207 deduction in submitting his return and paying the amount due by him.

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