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SENATE BILL NO. 530

Offered January 14, 2004

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A *BILL to amend and reenact §§ 3.1-1111, 58.1-302, 58.1-320, 58.1-321, 58.1-322, 58.1-339.8, 58.1-391, 58.1-392, 58.1-402, 58.1-441, 58.1-603, 58.1-604, 58.1-604.1, 58.1-605, 58.1-606, 58.1-608.3, 58.1-614, 58.1-615, 58.1-626, 58.1-639, 58.1-901, 58.1-1001, 58.1-1018, 58.1-2217, 58.1-2249, 58.1-2289, 58.1-2701, 58.1-2706, 58.1-3523, 58.1-3524, 58.1-3833, and 58.1-3840 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 58.1-339.11, 58.1-390.1, 58.1-390.2, 58.1-393.1, by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395, by adding a section numbered 58.1-628.2, and by adding in Article 1 of Chapter 10 of Title 58.1 a section numbered 58.1-1017.1; and to repeal §§ 58.1-611.1, 58.1-627, 58.1-628, and 58.1-3536, and Article 7 (§§ 58.1-3830, 58.1-3831 and 58.1-3832) of Chapter 38 of Title 58.1 of the Code of Virginia; relating to the revenues of the Commonwealth.*

 Patron—Hanger

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-1111, 58.1-302, 58.1-320, 58.1-321, 58.1-322, 58.1-339.8, 58.1-391, 58.1-392, 58.1-402, 58.1-441, 58.1-603, 58.1-604, 58.1-604.1, 58.1-605, 58.1-606, 58.1-608.3, 58.1-614, 58.1-615, 58.1-626, 58.1-639, 58.1-901, 58.1-1001, 58.1-1018, 58.1-2217, 58.1-2249, 58.1-2289, 58.1-2701, 58.1-2706, 58.1-3523, 58.1-3524, 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 sections numbered 58.1-339.11, 58.1-390.1, 58.1-390.2, 58.1-393.1, by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395, by adding 58.1-628.1, and by adding in Article 1 of Chapter 10 of Title 58.1 a section numbered 58.1-1017.1 as follows:

§ 3.1-1111. Tobacco Indemnification and Community Revitalization Fund; tax credits for technology industries in tobacco-dependent localities.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B and by §§ 3.1-1109.1 and 32.1-360. ~~However, in no case shall the amount received by the Endowment and Fund be included in general fund revenue calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.~~

B. There is created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Subject to the sale of all or any portion of the Commission Allocation, fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. In the event of such sale (i) the Commission Allocation shall be paid in accordance with the agreement for the period of sale and (ii) the Fund shall receive the amounts withdrawn from the Endowment in accordance with § 3.1-1109.1. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter; however, starting with the fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may deposit moneys from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.15, for purposes of funding the tax credits provided in §§ 58.1-439.13 and 58.1-439.14 and the grants provided in § 58.1-439.17. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

C. The obligations of the Commission shall not be a debt or grant or loan of credit of the Commonwealth of Virginia, and the Commonwealth shall not be liable thereon, nor shall such obligations be payable out of any funds other than those credited to the Fund.

§ 58.1-302. Definitions.

For the purpose of this chapter and unless otherwise required by the context:

"Affiliated" means two or more corporations subject to Virginia income taxes whose relationship to

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59 each other is such that (i) one corporation owns at least eighty percent of the voting stock of the other
60 or others or (ii) at least eighty percent of the voting stock of two or more corporations is owned by the
61 same interests.

62 "Compensation" means wages, salaries, commissions and any other form of remuneration paid or
63 accrued to employees for personal services.

64 "Corporation" includes associations, joint stock companies and insurance companies.

65 "Domicile" means the permanent place of residence of a taxpayer and the place to which he intends
66 to return even though he may actually reside elsewhere. In determining domicile, consideration may be
67 given to the applicant's expressed intent, conduct, and all attendant circumstances including, but not
68 limited to, financial independence, business pursuits, employment, income sources, residence for federal
69 income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of
70 personal and real property owned by the applicant, motor vehicle and other personal property
71 registration, residence for purposes of voting as proven by registration to vote, if any, and such other
72 factors as may reasonably be deemed necessary to determine the person's domicile.

73 "Foreign source income" means:

74 1. Interest, other than interest derived from sources within the United States;

75 2. Dividends, other than dividends derived from sources within the United States;

76 3. Rents, royalties, license, and technical fees from property located or services performed without
77 the United States or from any interest in such property, including rents, royalties, or fees for the use of
78 or the privilege of using without the United States any patents, copyrights, secret processes and
79 formulas, good will, trademarks, trade brands, franchises, and other like properties;

80 4. Gains, profits, or other income from the sale of intangible or real property located without the
81 United States; and

82 5. The amount of an individual's share of net income attributable to a foreign source qualified
83 business unit of an electing small business corporation (S corporation). For purposes of this subsection,
84 qualified business unit shall be defined by § 989 of the Internal Revenue Code, and the source of such
85 income shall be determined in accordance with §§ 861, 862 and 987 of the Internal Revenue Code.

86 In determining the source of "foreign source income," the provisions of §§ 861, 862, and 863 of the
87 Internal Revenue Code shall be applied except as specifically provided in subsection 5 above.

88 "Income and deductions from Virginia sources" includes:

89 1. Items of income, gain, loss and deduction attributable to:

90 a. The ownership of any interest in real or tangible personal property in Virginia;

91 b. A business, trade, profession or occupation carried on in Virginia; or

92 c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or
93 paid at a location in Virginia.

94 2. Income from intangible personal property, including annuities, dividends, interest, royalties and
95 gains from the disposition of intangible personal property to the extent that such income is from
96 property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

97 "Individual" means all natural persons whether married or unmarried and fiduciaries acting for
98 natural persons, but not fiduciaries acting for trusts or estates.

99 "Intangible expenses and costs" means:

100 1. Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or
101 indirect acquisition, use, maintenance or management, ownership, sale, exchange, lease, transfer, or any
102 other disposition of intangible property to the extent such amounts are allowed as deductions or costs in
103 determining taxable income;

104 2. Losses related to or incurred in connection directly or indirectly with factoring transactions or
105 discounting transactions;

106 3. Royalty, patent, technical and copyright fees;

107 4. Licensing fees; and

108 5. Other similar expenses and costs.

109 "Intangible property" means patents, patent applications, trade names, trademarks, service marks,
110 copyrights and similar types of intangible assets, as well as money.

111 "Interest expenses and costs" means amounts directly or indirectly allowed as deductions under
112 Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal
113 Revenue Code to the extent such expenses and costs are directly or indirectly for, related to, or in
114 connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale,
115 exchange, lease, transfer, or disposition of intangible property.

116 "Nonresident estate or trust" means an estate or trust which is not a resident estate or trust.

117 "Related entity" means:

118 1. A stockholder who is an individual, or a member of the stockholder's family enumerated in Section
119 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own,
120 directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of

the taxpayer's outstanding stock;

2. A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or

3. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of Section 318 of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.

"Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is a related entity, a component member as defined in Section 1563(b) of the Internal Revenue Code, or is a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code.

"Resident" applies only to natural persons and includes, for the purpose of determining liability for the taxes imposed by this chapter upon the income of any taxable year every person domiciled in Virginia at any time during the taxable year and every other person who, for an aggregate of more than 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in Virginia or not. The word "resident" shall not include any member of the United States Congress who is domiciled in another state.

"Resident estate or trust" means:

1. The estate of a decedent who at his death was domiciled in the Commonwealth;
2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;
3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or
4. A trust or estate which is being administered in the Commonwealth.

"Sales" means all gross receipts of the corporation not allocated under § 58.1-407, except the sale or other disposition of intangible property shall include only the net gain realized from the transaction.

"State" means for purposes of Article 10 of this chapter any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country.

"Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a fiduciary income tax return under the laws of the United States.

"Virginia fiduciary adjustment" means the net amount of the applicable modifications described in § 58.1-322 (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust) which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment shall not include the modification in subsection D of § 58.1-322, except that the amount of state income taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also include the modification in subsection D of § 58.1-322, regarding the deduction for the purchase of a prepaid tuition contract or contribution to a savings trust account.

§ 58.1-320. Imposition of tax.

A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual as follows:

Two percent on income not exceeding \$3,000 for taxable years beginning before January 1, 2004;

Three percent on income in excess of \$3,000, but not in excess of \$5,000 for taxable years beginning before January 1, 2004;

Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

Five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning January 1, 1990, through December 31, 2003;

Five percent on income not exceeding \$50,000 for taxable years beginning on or January 1, 2004;

Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

182 Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January
183 1, 1988, through December 31, 1988;

184 Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January
185 1, 1989, through December 31, 1989; ~~and~~

186 Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and
187 after January 1, 1990, *through December 31, 2003*;

188 *Six percent on income in excess of \$50,000 but not in excess of \$100,000 for taxable years beginning*
189 *on or after January 1, 2004; and*

190 *Six and one-half percent on income in excess of \$100,000 for taxable years beginning on or after*
191 *January 1, 2004.*

192 § 58.1-321. Exemptions and exclusions.

193 A. No tax levied pursuant to § 58.1-320 is imposed, nor any return required to be filed by:

194 1. A single individual where the Virginia adjusted gross income for such taxable year is less than
195 ~~\$3,000 for taxable years beginning before January 1, 1987; and less than \$5,000 for taxable years~~
196 ~~beginning on and or after January 1, 1987, through December 31, 2003; and less than \$7,000 for~~
197 ~~taxable years beginning on or after January 1, 2004;~~

198 2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year
199 is less than ~~\$3,000 for taxable years beginning before January 1, 1987; and less than \$8,000 for taxable~~
200 ~~years beginning on and or after January 1, 1987 (or one-half of such amount in the case of a married~~
201 ~~individual filing a separate return) through December 31, 2003; and less than \$13,000 for taxable years~~
202 ~~beginning on or after January 1, 2004 (or one-half of such amount in the case of a married individual~~
203 ~~filing a separate return.~~

204 For the purposes of this section "Virginia adjusted gross income" means federal adjusted gross
205 income for the taxable years with the modifications specified in § 58.1-322 B, § 58.1-322 C and the
206 additional deductions allowed under § 58.1-322 D 2 b and D 5.

207 B. Persons in the armed forces of the United States stationed on military or naval reservations within
208 Virginia who are not domiciled in Virginia shall not be held liable to income taxation for compensation
209 received from military or naval service.

210 § 58.1-322. Virginia taxable income of residents.

211 A. The Virginia taxable income of a resident individual means his federal adjusted gross income for
212 the taxable year, which excludes combat pay for certain members of the Armed Forces of the United
213 States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications
214 specified in this section.

215 B. To the extent excluded from federal adjusted gross income, there shall be added:

216 1. Interest, less related expenses to the extent not deducted in determining federal income, on
217 obligations of any state other than Virginia, or of a political subdivision of any such other state unless
218 created by compact or agreement to which Virginia is a party;

219 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
220 taxable income, on obligations or securities of any authority, commission or instrumentality of the
221 United States, which the laws of the United States exempt from federal income tax but not from state
222 income taxes;

223 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

224 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum
225 distribution allowance and any amount excludable for federal income tax purposes that is excluded from
226 federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions
227 under § 402 of the Internal Revenue Code; and

228 5. through 8. [Repealed.]

229 9. The amount required to be included in income for the purpose of computing the partial tax on an
230 accumulation distribution pursuant to § 667 of the Internal Revenue Code.

231 C. To the extent included in federal adjusted gross income, there shall be subtracted:

232 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
233 and on obligations or securities of any authority, commission or instrumentality of the United States to
234 the extent exempt from state income taxes under the laws of the United States including, but not limited
235 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
236 interest on equipment purchase contracts, or interest on other normal business transactions.

237 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
238 or of any political subdivision or instrumentality of this Commonwealth.

239 3. [Repealed.]

240 4. Benefits received under Title II of the Social Security Act and other benefits subject to federal
241 income taxation solely pursuant to § 86 of the Internal Revenue Code.

242 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
243 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on

the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under this subdivision.

4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280C (a) of the Internal Revenue Code.

7, 8. [Repealed.]

9. [Expired.]

10. Any amount included therein less than \$600 from a prize awarded by the State Lottery Department.

11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.

12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

13. [Repealed.]

14. (Expires for taxable years beginning on and after January 1, 2004) The amount of any qualified agricultural contribution as determined in § 58.1-322.2.

15, 16. [Repealed.]

17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not otherwise subtracted under this subsection, earned for any month during any part of which such member performed military service in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer completes such service.

19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in

§ 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

24. Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of salary for each federal and state employee whose annual salary is \$15,000 or less.

25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

28. For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of such victim.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

29. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a)(2), then the entire gain recognized may be subtracted.

b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a)(3), then 20 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in each of the four succeeding taxable years.

30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1, 2005, the indemnification payments received by contract poultry growers and table egg producers from the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of poultry who contract with poultry growers qualify for this subtraction.

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the

taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987; \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; ~~and~~ \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and \$3,000 for single individuals for taxable years beginning on ~~and~~ or after January 1, 1989, ~~through December 31, 2003; and \$7,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) and \$3,500 for single individuals for taxable years beginning on or after January 1, 2004;~~ provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through December 31, 1987, ~~and~~; \$800 for taxable years beginning on ~~and~~ or after January 1, 1988, ~~through December 31, 2003; and \$2,500 for taxable years beginning on or after January 1, 2004,~~ for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. For taxable years beginning on ~~and~~ or after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption ~~in the amount of \$800 for the taxable year.~~

~~b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The additional deduction for blind or aged taxpayers allowed under this subdivision and the additional personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.~~

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. Effective for all taxable years beginning on or after January 1, 1996, ~~through December 31, 2003,~~ a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age 62 through 64.

Effective for all taxable years beginning on or after January 1, 2004:

a. For taxpayers age 62 through 64, a deduction in the amount of (i) \$6,000 if the combined federal adjusted gross income does not exceed \$45,000; (ii) \$4,500 if the combined federal adjusted gross income is in excess of \$45,000 but does not exceed \$60,000; (iii) \$3,000 if the combined federal adjusted gross income is in excess of \$60,000 but does not exceed \$85,000; (iv) \$1,500 if the combined federal adjusted gross income is in excess of \$85,000 but does not exceed \$125,000; and (v) \$0 if the combined federal adjusted gross income exceeds \$125,000.

b. For taxpayers age 65 or older, a deduction in the amount of (i) \$12,000 if the combined federal adjusted gross income does not exceed \$45,000; (ii) \$9,000 if the combined federal adjusted gross income is in excess of \$45,000 but does not exceed \$60,000; (iii) \$6,000 if the combined federal adjusted gross income is in excess of \$60,000 but does not exceed \$85,000; (iv) \$3,000 if the combined federal adjusted gross income is in excess of \$85,000 but does not exceed \$125,000; and (v) \$0 if the combined federal adjusted gross income exceeds \$125,000.

"Combined federal adjusted gross income" means for single persons, heads of household, qualifying widows and qualifying widowers, the person's federal adjusted gross income for the taxable year; and for married persons, regardless of whether or not such married persons file jointly or separately for federal income tax purposes, the sum of the federal adjusted gross income for both spouses for the taxable year.

6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the

Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to \$2,000 per prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a savings trust account exceeds \$2,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$2,000 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$2,000 per prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a savings trust account, less any amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take the deduction for the full amount paid during such years, less any amounts previously deducted with respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.

8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.

9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. For taxable years beginning on and after January 1, 2000, the amount an individual pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes.

E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

§ 58.1-339.8. Income tax credit for low-income taxpayers.

A. As used in this section, unless the context requires otherwise:

"Family Virginia adjusted gross income" means the combined Virginia adjusted gross income of an individual, the individual's spouse, and any person claimed as a dependent on the individual's or his spouse's income tax return for the taxable year.

"Poverty guidelines" means the poverty guidelines for the forty-eight contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673 (2) of the Omnibus Budget Reconciliation Act of 1981.

"Virginia adjusted gross income" has the same meaning as the term is defined in § 58.1-321.

B. For taxable years beginning on and after January 1, 2000, any individual or persons filing a joint return whose family Virginia adjusted gross income does not exceed one hundred percent of the poverty guideline amount corresponding to a household of an equal number of persons as listed in the poverty guidelines published during such taxable year, shall be allowed a credit against the tax levied pursuant to § 58.1-320 in an amount equal to \$300 each for the individual, the individual's spouse, and any person claimed as a dependent on the individual's or married persons' income tax return for the taxable year. For any taxable year in which a husband and wife file separate Virginia income tax returns, the

credit provided under this section shall be allowed against the tax for only one of such two tax returns. Additionally, the credit provided under this section shall not be allowed against such tax of a dependent of the individual or of married persons.

C. The amount of the credit provided pursuant to this section for any taxable year shall not exceed the individual's or married persons' Virginia income tax liability.

D. Notwithstanding any other provision of this section, such credit shall not be allowed in any taxable year in which the individual, the individual's spouse, or both, or any person claimed as a dependent on such individual's or married persons' income tax return, claims one or any combination of the following on his or their income tax return for such taxable year:

1. The subtraction under subdivision C 11 of § 58.1-322;
2. The subtraction under subdivision C 23 of § 58.1-322;
3. The subtraction under subdivision C 24 of § 58.1-322;
4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision D 2 a b of § 58.1-322; or

5. The deduction under subdivision D 5 of § 58.1-322.

§ 58.1-339.11. Credit for sales taxes paid on food.

A. For each taxable year beginning on or after January 1, 2004, there shall be allowed to the resident individuals qualifying under subsection B, as a credit against the taxes imposed pursuant to Article 2 (§58.1-320 et seq.) of Chapter 3 of this title, a tax credit for sales tax paid on food in the amount of \$40 for each personal exemption claimed on the taxpayer's Virginia individual income tax return pursuant to subdivision D 2 a of § 58.1-322. The credit shall not be allowable for the additional personal exemptions allowed for aged and blind taxpayers.

B. An individual shall qualify for the credit hereunder if he is a resident of the Commonwealth and is not an inmate of a public institution.

C. If the amount of credit allowed under this section exceeds the individual's income tax liability for the taxable year, the amount that exceeds the tax liability shall be refunded and interest shall accrue on such refund until paid as provided in subsection B of § 58.1-1833.

D. No individual for which a personal exemption is claimed on another individual's individual income tax return for the taxable year shall be entitled to the tax credit for sales tax on food. If the tax credit for sales tax paid on food is claimed on more than one return for the same individual in the taxable year, the Tax Commissioner is authorized to determine the individual entitled to claim the credit.

E. Credits to minors shall be claimed by the parent or guardian. Credit to dependents other than minors shall be claimed by the individual entitled to claim the dependents for federal income tax purposes.

F. The credit for sales tax paid on food allowed pursuant to this section shall be claimed on individual income tax returns, or if the taxpayer is not required to file an individual income tax return pursuant to § 58.1-321, such other return as prescribed by the Tax Commissioner.

§ 58.1-390.1 Definitions.

The following words and terms, when used in this article, shall have the following meanings unless the context clearly indicates otherwise:

"Pass-through entity" means any entity, including a limited partnership, a limited liability partnership, a general partnership, a limited liability company, a professional limited liability company, a business trust or a Subchapter S Corporation, that is recognized as a separate entity for federal income tax purposes, in which the partners, members or shareholders report their share of the income, gains, losses, deductions and credits from the entity on their federal income tax returns.

"Owner" means any individual or entity who is treated as a partner, member, or shareholder of a pass-through entity for federal income tax purposes.

§ 58.1-390.2 Taxation of pass-through entities.

Except as provided for in this article, owners of pass-through entities shall be liable for tax under this chapter only in their separate or individual capacities.

§ 58.1-391. Virginia taxable income of owners of a pass-through entity.

A. In determining Virginia taxable income of a ~~partner~~ an owner of a pass-through entity, any modification described in § 58.1-322 ~~which that~~ relates to an item of ~~partnership~~ pass-through entity income, gain, loss or deduction shall be made in accordance with the ~~partner's~~ owner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a ~~partner's~~ an owner's distributive share of any such item is not included in any category of income, gain, loss or deduction required to be taken into account separately for federal income tax purposes, the ~~partner's~~ owners distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of ~~partnership~~ pass-through entity taxable income or loss.

B. Each item of ~~partnership~~ pass-through entity income, gain, loss or deduction shall have the same character for a ~~partner~~ an owner under this chapter as for federal income tax purposes. Where an item is

not characterized for federal income tax purposes, it shall have the same character for a partner as an owner as if realized directly from the source from which realized by the partnership pass-through entity or incurred in the same manner by the partnership pass-through entity.

C. Where a partner's an owner's distributive shares of an item of partnership pass-through entity income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership pass-through entity agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the partner's owner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership pass-through entity agreement made no special provision with respect to such item.

§ 58.1-392. Reports by pass-through entities.

No report shall be required to be filed with the Department of Taxation by any partnership organized under the laws of the Commonwealth or having income from Virginia sources. However, the Tax Commissioner shall have the authority to promulgate regulations requiring that partnerships furnish copies of federal partnership returns and attached schedules or any other information which he deems necessary. In promulgating such regulations, the Tax Commissioner may prescribe the imposition of a penalty in the amount of \$100 for failure to comply, within a reasonable time, to the request for information as set forth therein.

A. Every pass-through entity doing business in Virginia, or having income from Virginia sources, shall make a return to the Department of Taxation on or before the fifteenth day of the fourth month following the close of its taxable year. Such returns shall be made and filed in the manner prescribed by the Department.

B. The return of a pass-through entity shall be signed by any one of the owners. An owner's name signed on the return shall be prima facie evidence that such owner is authorized to sign the return on behalf of the pass-through entity.

C. The Tax Commissioner may establish an income threshold for the filing of returns by pass-through entities and their owners. Pass-through entities and owners with income below this threshold shall not be required to file a return.

D. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees operating the property or business of pass-through entities must make and file returns of income for such pass-through entities. If a receiver has full custody of and control over the business or property of a pass-through entity, he shall be deemed to be operating such business or property, whether he is engaged in carrying on the business for which the pass-through entity was organized or only in marshaling, selling, or disposing of its assets for purposes of liquidation.

E. Pass-through entities may be required to file the return using an electronic medium prescribed by the Tax Commissioner. The Tax Commissioner shall establish a minimum number of owners for the electronic filing requirement. Waivers shall be granted only if the Tax Commissioner finds that the requirement creates an unreasonable burden on the pass-through entity. All requests for waivers must be submitted to the Tax Commissioner in writing. Pass-through entities that have fewer than the established minimum number of owners may, at such pass-through entity's option, file such annual return on such prescribed electronic medium in lieu of filing the annual return on paper.

§ 58.1-393.1. Extension of time for filing return by pass-through entity.

A. Whenever any pass-through entity has been allowed or granted an extension of time within which to file any federal report of its income for any taxable year, the due date for the filing of the report or return required by this article shall be extended to the date six months after such due date, or 30 days after the extended date for filing the federal report, whichever is later.

B. In addition, the Department may grant an extension or extensions of time not to exceed a maximum of six months beyond the due date required by this article for filing such pass-through entity return.

§ 58.1-394.1. Failure of pass-through entity to make a return.

A. Any pass-through entity that fails to file a return required by this article within the time required shall be liable for a penalty of \$200 if the failure is for not more than one month, with an additional \$200 for each additional month or fraction thereof during which such failure to file continues, not exceeding six months in the aggregate. In no case, however, shall the penalty be less than \$200.

B. If any pass-through entity's failure to file a return required by this article exceeds six months, the Department shall assess a penalty of six percent of the total amount of Virginia taxable income derived by its owners from the pass-through entity for the taxable year. The Department may determine such penalty from any information in its possession. The penalty assessed pursuant to this subsection shall be reduced by the penalty assessed pursuant to subsection A and any tax paid by the owners on their share of income from the pass-through entity for the taxable year.

C. The penalties set forth in this subsection shall be assessed and collected by the Department in the manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the instance of the Department. In addition, such pass-through entity shall be compellable by mandamus to

file such return.

§ 58.1-394.2. *Fraudulent returns, etc., of pass-through entities; penalty.*

A. Any officer or owner of any pass-through entity who makes a fraudulent return or statement with the intent of assisting or facilitating the evasion of the payment of the taxes prescribed by this chapter by the pass-through entity or an owner shall be liable for a penalty of not more than \$1,000, to be assessed and collected in the manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the instance of the Department.

B. In addition to other penalties provided by law, any officer or owner of a pass-through entity who makes a fraudulent return or statement with the intent of assisting or facilitating the evasion of the payment of the taxes prescribed by this chapter by the pass-through entity or an owner shall be guilty of a Class 6 felony, or who willfully fails or refuses to make a return required by this chapter at the time or times required by law shall be guilty of a Class 1 misdemeanor. A prosecution under this section shall be commenced within five years next after the commission of the offense.

§ 58.1-395. *Nonresident owners.*

Pass-through entities may make written application to the Tax Commissioner for permission to file a statement of combined pass-through entity income attributable to nonresident owners and thereby relieve nonresident owners from filing individual nonresident returns. The application must state the reasons for seeking such permission. The Tax Commissioner, in his sole discretion, may, for good cause, grant permission to file a combined nonresident return upon such terms as he may determine.

§ 58.1-402. *Virginia taxable income.*

A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable income and any other income taxable to the corporation under federal law for such year of a corporation adjusted as provided in subsections B, C and D.

For a regulated investment company and a real estate investment trust, such term means the "investment company taxable income" and "real estate investment trust taxable income," respectively, to which shall be added in each case any amount of capital gains and any other income taxable to the corporation under federal law which shall be further adjusted as provided in subsections B, C and D.

B. There shall be added to the extent excluded from federal taxable income:

1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which the Commonwealth is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

6. The amount of employee stock ownership credit carry-over deducted by the corporation in computing federal taxable income under § 404 (i) of the Internal Revenue Code;

7. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

8. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs and intangible expenses and costs if one of the following applies:

1. The corresponding item of income received by the related member is subject to a tax based on or measured by net income imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government, or

2. The corporation can establish to the satisfaction of the Tax Commissioner that the interest expenses and costs and intangible expenses and costs meets both of the following: (i) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

b. Nothing in this subdivision shall be construed to limit or negate the Department's authority under § 58.1-446.

674 C. There shall be subtracted to the extent included in and not otherwise subtracted from federal
675 taxable income:

676 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
677 and on obligations or securities of any authority, commission or instrumentality of the United States to
678 the extent exempt from state income taxes under the laws of the United States including, but not limited
679 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
680 interest on equipment purchase contracts, or interest on other normal business transactions.

681 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
682 or of any political subdivision or instrumentality of this Commonwealth.

683 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the
684 Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding
685 year, or the last year in which such corporation has income, under the provisions of the income tax laws
686 of the Commonwealth.

687 4. The amount of any refund or credit for overpayment of income taxes imposed by this
688 Commonwealth or any other taxing jurisdiction.

689 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue
690 Code (foreign dividend gross-up).

691 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
692 deducted for federal purposes on account of the provisions of § 280C (a) of the Internal Revenue Code.

693 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F
694 income).

695 8. Any amount included therein which is foreign source income as defined in § 58.1-302.

696 9. [Repealed.]

697 10. The amount of any dividends received from corporations in which the taxpaying corporation
698 owns 50 percent or more of the voting stock.

699 11. [Repealed.]

700 12. [Expired.]

701 13. (Expires for taxable years beginning on and after January 1, 2004) The amount of any qualified
702 agricultural contribution as determined in § 58.1-322.2.

703 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research
704 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
705 deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code.

706 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
707 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
708 (§ 22.1-175.1 et seq.) of Title 22.1.

709 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
710 exchange of real property or the sale or exchange of an easement to real property which results in the
711 real property or the easement thereto being devoted to open-space use, as that term is defined in
712 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
713 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
714 shall be allowed for three years following the year in which the subtraction is taken.

715 17. For taxable years beginning on and after January 1, 2001, any amount included therein with
716 respect to § 58.1-440.1.

717 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
718 "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement
719 Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part
720 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b) any business
721 holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
722 Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota
723 allotment.

724 19. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
725 2005, the indemnification payments received by contract poultry growers and table egg producers from
726 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
727 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
728 poultry who contract with poultry growers qualify for this subtraction.

729 20. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the
730 Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7
731 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

732 a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a)(2), then the
733 entire gain recognized may be subtracted.

734 b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a)(3), then 20
735 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in

each of the four succeeding taxable years.

D. Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58.1-315.

§ 58.1-441. Reports by corporations.

A. Every corporation organized under the laws of the Commonwealth, or having income from Virginia sources, *other than a Subchapter S corporation subject to the return filing requirements of § 58.1-392*, shall make a report to the Department on or before the fifteenth day of the fourth month following the close of its taxable year. Such reports shall be made on forms prescribed by the Department and shall contain such information, including the gross receipts from any business carried on in the Commonwealth and a depreciation schedule of property used in such trade or business, as may be necessary for the proper enforcement of this chapter and be accompanied by a copy of any federal tax return or report filed for such taxable year. The Department shall not require any nonprofit organization created exclusively to assist a law-enforcement official or agency in apprehending and convicting perpetrators of crimes, to report on such returns, or otherwise, the names of individuals or amounts paid to such individuals by the organization for providing information about certain crimes.

Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business of corporations must make returns of income for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property, whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, or disposing of its assets for purposes of liquidation.

B. Notwithstanding the provisions of subsection A, every organization to whom subdivision 5 of § 58.1-401 applies, and having unrelated business taxable income or other taxable income, shall make a report to the Department on or before the fifteenth day of the sixth month following the close of the organization's taxable year.

§ 58.1-603. Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of ~~three and one-half~~ *four* percent:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services which are expressly stated as taxable within this chapter.

§ 58.1-604. Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of ~~three and one-half~~ *four* percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

5. The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less during any calendar year.

§ 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts.

In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is ~~three and one-half~~ four percent on all tangible personal property except motor vehicles, which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.

For purposes of this section the words "motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, the word "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under §§ 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, or § 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

§ 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. ~~The applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local tax.~~ No discount under § 58.1-622 shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least sixty days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax, ~~with the adjustments required by § 58.1-628.~~

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one

political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last preceding school age population census, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

H. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection G above, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest statewide school census. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last preceding school age population census, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

J. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection G or H of this section be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

§ 58.1-606. To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, ~~except that the applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local tax, and except that no discount under § 58.1-622 shall be allowed on a local use tax.~~

920 B. The council of any city and the governing body of any county desiring to impose a local use tax
921 under this section may do so in the manner following:

922 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local
923 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority
924 of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this
925 section, and providing that the local use tax shall become effective on the first day of a month at least
926 sixty days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to
927 the Tax Commissioner so that it will be received within five days after its adoption. The resolution
928 authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision
929 of law, including any charter provision.

930 2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use
931 tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections
932 B and C of § 58.1-605.

933 C. Any local use tax levied under this section shall be administered and collected by the Tax
934 Commissioner in the same manner and subject to the same penalties as provided for the state use tax;
935 with the adjustments required by § 58.1-628.

936 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax
937 applies, the situs of which for state and local sales tax purposes is the city or county of location of each
938 place of business of every dealer paying the tax to the Commonwealth without regard to the city or
939 county of possible use by the purchasers. However, the local use tax authorized by this section shall
940 apply to tangible personal property purchased without this Commonwealth for use or consumption
941 within the city or county imposing the local use tax, or stored within the city or county for use or
942 consumption, where the property would have been subject to the sales tax if it had been purchased
943 within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal
944 property where the place of business of the lessor is without this Commonwealth and such leases or
945 rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state
946 use tax applies.

947 E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers
948 for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly
949 use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by
950 cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is
951 unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible
952 personal property involved shall be remitted to the Commonwealth by such dealer without attempting to
953 assign the shipment to any city or county.

954 F. Local use tax revenue shall be distributed among the cities and counties for which it is collected,
955 respectively, as shown by the records of the Department, and the procedure shall be the same as that
956 prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is
957 not accurately assignable to a particular city or county shall be distributed monthly by the appropriate
958 state authorities among the cities and counties in this Commonwealth imposing the local use tax upon
959 the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax
960 was in effect in the taxable month involved, as shown by the records of the Department, and computed
961 with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
962 among such cities and counties, respectively, in the month of distribution. Notwithstanding any other
963 provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use
964 tax. Any significant changes to the method of local use tax distribution shall be phased in over a five
965 year period. Distribution information shall be shared with the affected localities prior to implementation
966 of the changes.

967 G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as
968 provided in § 58.1-605 with respect to local sales tax revenue.

969 § 58.1-608.3. Entitlement to certain sales tax revenues.

970 A. As used in this section, the following words and terms have the following meanings, unless some
971 other meaning is plainly intended:

972 "Bonds" means any obligations of a municipality for the payment of money.

973 "Cost," as applied to any public facility or to extensions or additions to any public facility, includes:
974 (i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of
975 the capital stock of the corporation owning the public facility and the amount to be paid to discharge
976 any obligations in order to vest title to the public facility or any part of it in the municipality; (ii)
977 expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of
978 plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land,
979 property, rights, easements and franchises acquired; (v) the cost of improvements, property or
980 equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of
981 construction or reconstruction; (viii) the cost of all labor, materials, machinery and equipment; (ix)

financing charges; (x) interest before and during construction and for up to one year after completion of construction; (xi) start-up costs and operating capital; (xii) payments by a municipality of its share of the cost of any multi-jurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to the financing of the public facility. Any obligation or expense incurred by the public facility in connection with any of the foregoing items of cost may be regarded as a part of the cost.

"Municipality" means any county, city, town, authority, commission, or other public entity.

"Public facility" means (i) any auditorium, coliseum, convention center, or conference center, which is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings, conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is owned by a foundation whose sole purpose is to benefit a state-supported university and which is attached to and is an integral part of such facility, together with any lands reasonably necessary for the conduct of the operation of such events; or (iii) any hotel which is attached to and is an integral part of such facility. However, such public facility must be located in a city with a population of at least 24,200 but no more than 24,500 as determined by the 1990 United States Census, at least 50,000 but no more than 52,500, at least 95,000 but no more than 105,000, or at least 130,000 but no more than 135,000. Any property, real, personal, or mixed, which is necessary or desirable in connection with any such auditorium, coliseum, convention center, or conference center, including, without limitation, facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. In addition, only a new public facility, or a public facility which will undergo a substantial and significant renovation or expansion, shall be eligible under subsection B of this section. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least fifty percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least fifty percent over that existing in the preexisting facility and shall have begun after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) of Title 58.1, as limited herein. "Sales tax revenues" does not include the revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § 33.1-23.03:1, nor shall it include the one percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to § 58.1-638 D on the basis of school age population. *Sales tax revenues shall also not include the revenue generated by the one-half percent sales and use tax increase enacted by the 2004 Session of the General Assembly.*

B. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, or (v) on or after July 1, 2001, but before July 1, 2004, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such bonds, which entitlement shall not exceed thirty years, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed.

C. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any bonds. Any appropriation made pursuant to this section shall be made only from sales tax revenues derived from the public facility for which bonds may have been issued to pay the cost, in whole or in part, of such public facility.

§ 58.1-614. Vending machine sales.

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on ~~four and one-half~~ five percent of such wholesale purchases.

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible

personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A of this section.

C. The provisions of subsections A and B of this section shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than ten cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section ~~or § 58.1-628~~, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each county or city in which he has machines.

§ 58.1-615. Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies fifty-two to fifty-three weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. 1. In addition to the amounts required under the provisions of this section and § 58.1-616, any dealer as defined by § 58.1-612 or direct payment permit holder pursuant to § 58.1-624, with taxable sales and purchases of \$1,300,000 or greater for the twelve-month period beginning July 1, and ending June 30 of the immediately preceding calendar year, shall be required to make a payment equal to 90 percent of the sales and use tax liability for the previous June. Such tax payments shall be made on or before the 30th day of June, if payment is made by electronic funds transfer, as defined in § 58.1-202.1. If payment is made by other than electronic funds transfer, such payment shall be made on or before the 25th day of June. For purposes of this provision, taxable sales or purchases shall be computed without regard to the number of certificates of registration held by the dealer. Every dealer or direct payment permit holder shall be entitled to a credit for the payment under this subsection on the return for June of the current year due July 20. The provisions of this subsection shall not apply to persons who are required to file only a Form ST-7, Consumer User Tax Return.

2. In lieu of the penalties provided in § 58.1-635, except with respect to fraudulent returns, failure to make a timely payment or full payment of the sales and use tax liability as provided in this subsection shall subject the dealer or direct payment permit holder to a penalty of six percent of the amount of tax underpayment that should have been properly paid to the Tax Commissioner. Interest will accrue as provided in § 58.1-15. The payment required by this subsection shall become delinquent on the first day following the due date set forth in this subsection if not paid.

3. *This subsection shall be effective until June 1, 2005.*

§ 58.1-626. Absorption of tax prohibited.

No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of such tax; ~~except as may be authorized under § 58.1-627 or § 58.1-628~~. Any person who violates this section shall be guilty of a Class 2 misdemeanor.

§ 58.1-628.2. *Adjustment to the rate of tax imposed under this chapter.*

If a dealer can show to the satisfaction of the Tax Commissioner that more than eighty-five percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ten cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall

determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales that was from sales at prices of eleven cents or more.

§ 58.1-639. Transitional provisions.

A. To the extent of any increase in the state sales and use tax rate enacted by the 1986 Special 2004 Session of the Virginia General Assembly, the Tax Commissioner, upon application of the purchaser in accordance with regulations promulgated by the Commissioner, shall have the authority to refund state sales or use taxes paid on purchases of tangible personal property made pursuant to bona fide real estate construction contracts, contracts for the sale of tangible personal property, and leases, provided that the real estate construction contract, contract for the sale of tangible personal property or lease is entered into prior to the date of enactment of the increase of the state sales and use tax rate; and further provided that the date of delivery of the tangible personal property is on or before March 30, 1987 September 30, 2004. The term "bona fide contract," when used in this section in relation to real estate construction contracts, shall include but not be limited to those contracts which are entered into prior to the enactment of the increase in the state sales and use tax rate, provided that such contracts include plans and specifications.

B. Notwithstanding the foregoing March 30, 1987 September 30, 2004, delivery date requirement, with respect to bona fide real estate construction contracts which contain a specific and stated date of completion, the date of delivery of such tangible personal property shall be on or before the completion date of the applicable project.

C. Applications for refunds pursuant to this section shall be made in accordance with the provisions of § 58.1-1823. Interest computed in accordance with § 58.1-1833 shall be added to the tax refunded pursuant to this section.

§ 58.1-901. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Decedent" means a deceased person.

"Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow. ~~In no event, however, shall such amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on January 1, 1978.~~

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

"Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

"Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

"State" means any state, territory or possession of the United States and the District of Columbia.

"Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time.

§ 58.1-1001. Tax levied; rate.

In addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of ~~one and one-quarter mills~~ one and one-half cents on each such cigarette.

§ 58.1-1017.1. Distribution of cigarette tax revenues; Local Government Cigarette Tax Trust Fund established.

A. All revenues received by the Commonwealth from the tax imposed pursuant to this article shall be paid into the state treasury and deposited to the Local Government Cigarette Tax Trust Fund (the "Fund") established in subsection C.

B. All moneys in the Fund shall be distributed to the counties and cities of the Commonwealth. Each county's and city's share of such moneys shall be determined pro rata based upon the population of the

1166 *respective county or city as compared to the total population in all counties and cities of the*
1167 *Commonwealth. The population for a county or city shall be determined using the most recent decennial*
1168 *census figures or the provisional population estimates as published by the Weldon Cooper Center for*
1169 *Public Services, whichever is most recent at the time of distribution of such moneys.*

1170 *The Tax Commissioner shall determine the amount of to be credited to each county and city using*
1171 *the formula described in subsection B and shall make a monthly written certification to the Comptroller*
1172 *of the same. The certification shall cover all revenues collected by the Tax Commissioner during the*
1173 *month from the tax imposed pursuant to this article. The Tax Commissioner shall make such*
1174 *certification for each month no later than the tenth day of the immediately following month.*

1175 *As soon as practicable after receipt of such certification but no later than 10 days after receipt, the*
1176 *Comptroller shall draw his warrant on the State Treasurer in the proper amount in favor of the county,*
1177 *city, or town.*

1178 *C. There is hereby created in the state treasury a special nonreverting fund to be known as the*
1179 *"Local Government Cigarette Tax Trust Fund." Interest earned on moneys in the Fund shall remain in*
1180 *the Fund and be credited to it. The Fund shall be established on the books of the Comptroller and any*
1181 *moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert*
1182 *to the general fund but shall remain in the Fund.*

1183 *D. Each county, city, or town that had a local cigarette tax in effect as of January 1, 2004, shall*
1184 *receive annually from the Commonwealth an amount no less than the amount collected by such county,*
1185 *city, or town from such tax for its fiscal year ending June 30, 2004. If the annual amount to be paid*
1186 *under subsection B is less than the amount collected from such tax by the county, city, or town for its*
1187 *fiscal year ending June 30, 2004, then the Comptroller shall make an additional annual payment to*
1188 *each such county, city, or town from general funds of the Commonwealth to make up for such*
1189 *difference. The Comptroller shall, annually in the month of December, draw his warrant on the State*
1190 *Treasurer for the additional payment to the respective counties, cities, and towns. For purposes of*
1191 *computing such additional payment, the Comptroller shall use the local cigarette tax revenues for the*
1192 *fiscal year ending June 30, 2004, as certified by the Auditor of Public Accounts, who shall make such*
1193 *certification to the Comptroller no later than November 30, 2004.*

1194 *§ 58.1-1018. Tax imposed on storage, use or consumption of cigarettes; exemption of products on*
1195 *which sales tax has been paid.*

1196 *An excise tax is hereby imposed on the storage, use or other consumption in this Commonwealth of*
1197 *cigarettes purchased at retail in an amount equal to that set out in § 58.1-1001. Every person storing,*
1198 *using or otherwise consuming in this Commonwealth cigarettes purchased at retail shall be liable for the*
1199 *tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to this*
1200 *Commonwealth; however, if such cigarettes have attached thereto the requisite stamps or if the excise*
1201 *tax imposed by Article 1 (§ 58.1-1000 et seq.) has been paid by the seller of such cigarettes, then the*
1202 *tax imposed by this article shall not be due.*

1203 *All revenues received by the Commonwealth from the tax imposed pursuant to this article shall be*
1204 *paid into the state treasury and deposited to the Local Government Cigarette Tax Trust Fund*
1205 *established in § 58.1-1017.1 and shall be distributed as provided in subsection B thereof.*

1206 *§ 58.1-2217. Taxes levied; rate.*

1207 *A. There is hereby levied a tax at the rate of ~~seventeen and one-half~~ twenty-two and one-half cents*
1208 *per gallon on gasoline and gasohol.*

1209 *B. There is hereby levied a tax at the rate of ~~sixteen~~ 21 cents per gallon on diesel fuel.*

1210 *C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that*
1211 *contains diesel fuel shall be taxed at the rate levied on diesel fuel.*

1212 *D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person,*
1213 *whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in*
1214 *highway vehicles any aviation gasoline shall be liable for the tax at the rate of ~~seventeen and one-half~~*
1215 *twenty-two and one-half cents per gallon, along with any penalties and interest that may accrue.*

1216 *E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or*
1217 *acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax*
1218 *at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded*
1219 *aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is*
1220 *hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded*
1221 *aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in*
1222 *any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells*
1223 *or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for*
1224 *the tax imposed at the rate of ~~sixteen~~ 21 cents per gallon, along with any penalties and interest that may*
1225 *accrue.*

1226 *F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline,*
1227 *aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and*

delivered or used in the Commonwealth.

§ 58.1-2249. Tax on alternative fuel.

A. There is hereby levied a tax at the rate of ~~sixteen~~ 21 cents per gallon on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to ~~sixteen~~ 21 cents per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of ~~fifty dollars~~ \$50 per vehicle on each highway vehicle that is fueled from a private source if the alternative fuels tax levied under this article has not been paid on fuel used in the vehicle. If such a highway vehicle is not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth for each complete month which shall have elapsed since the beginning of such year.

§ 58.1-2289. Disposition of tax revenue generally.

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue derived from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or § 58.1-2701, and remaining after authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.

Revenues collected under this chapter may be also used for (i) contributions toward the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law and (ii) expenditures for the operation and maintenance of the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, and the Department of Motor Vehicles as may be provided by law.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid at the rate of ~~seventeen~~ 22 cents per gallon, or in the case of diesel fuel, ~~fifteen and one-half~~ *twenty and one-half* cents per gallon, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for

the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223, a sum as established by the General Assembly.

E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less taxes collected for aviation fuels.

§ 58.1-2701. Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~nineteen and one-half~~ *twenty four and one-half* cents per gallon calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ *60* degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of ~~\$100~~ *\$150* per year for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

§ 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to ~~sixteen~~ *21* cents per gallon on all motor fuel, diesel fuel and liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

C. The Department may allow a refund upon receipt of proper application and review. It shall be at the discretion of the Department to determine whether an audit is required.

D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of not less than ~~ten~~ *10* days to the applicant and the Attorney General.

E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Construction Fund.

F. Whenever a person operating under lease to a motor carrier to perform transport services on behalf of the carrier purchases motor fuel, diesel fuel or liquefied gases relating to such services, such payments or purchases may, at the discretion of the Department, be considered payment or purchases by the carrier.

§ 58.1-3523. Definitions.

As used in this chapter:

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Commissioner of the revenue" means the same as that set forth in § 58.1-3100. For purposes of this chapter, in a county or city which does not have an elected commissioner of the revenue, "commissioner of the revenue" means the officer who is primarily responsible for assessing motor vehicles for the purposes of tangible personal property taxation.

"Department" means the Department of Motor Vehicles.

"Effective tax rate" means the tax rate imposed by a locality on tangible personal property on the applicable class of tangible personal property multiplied by the assessment ratio.

"Leased" means leased by a natural person as lessee and used for nonbusiness purposes.

"Percentage level" means the percentage of the reimbursable amount to be reimbursed or paid by the Commonwealth.

"Privately owned" means owned by a natural person and used for nonbusiness purposes.

"Qualifying vehicle" means any passenger car, motorcycle, and pickup or panel truck, as those terms are defined in § 46.2-100, that is determined by the commissioner of the revenue of the county or city in which the vehicle has situs as provided by § 58.1-3511 to be (i) privately owned or (ii) leased pursuant to a contract requiring the lessee to pay the tangible personal property tax on such vehicle. In determining whether a vehicle is a qualifying vehicle, the commissioner of revenue may rely on the registration of such vehicle with the Department pursuant to Chapter 6 (§ 46.2-600 et seq.) of Title 46.2.

"Reimbursable amount" means the value of a qualifying vehicle, up to the first \$20,000 of value, multiplied by the effective tax rate in effect in the locality on July 1, 1997, or August 1, 1997, whichever is greater.

"Tangible personal property tax" means the tax levied pursuant to Article 1 (§ 58.1-3500 et seq.) of Chapter 35 of Title 58.1.

"Treasurer" means the same as that set forth in § 58.1-3123, when used herein with respect to a county or city. When used herein with respect to a town, "treasurer" means the officer who is primarily responsible for the billing and collection of tangible personal property taxes levied upon motor vehicles by such town, and means the treasurer of the county or counties in which such town is located if such functions are performed for the town by the county treasurer or treasurers.

"Used for nonbusiness purposes" means the preponderance of use is for other than business purposes. The preponderance of use for other than business purposes shall be deemed not to be satisfied if: (i) the motor vehicle is expensed on the taxpayer's federal income tax return pursuant to Internal Revenue Code § 179; (ii) more than fifty percent of the basis for depreciation of the motor vehicle is depreciated for federal income tax purposes; or (iii) the allowable expense of total annual mileage in excess of fifty percent is deductible for federal income tax purposes or reimbursed pursuant to an arrangement between an employer and employee.

"Value" means the fair market value determined by the method prescribed in § 58.1-3503 and used by the locality as of August 1, 1997, in valuing the qualifying vehicle.

§ 58.1-3524. Reimbursement of tangible personal property taxes; deduction on tangible personal property tax bills.

A. For tax year 1998, the Commonwealth shall directly reimburse taxpayers, for tangible personal property tax levies paid on any qualifying vehicle, a percentage of the reimbursable amount determined pursuant to subdivision B 1, as provided in § 58.1-3525. For tax year 1999 and tax years thereafter, the Commonwealth shall pay to treasurers a percentage of the reimbursable amount determined pursuant to subdivisions B 2 through B 5 on any qualifying vehicle, as provided in § 58.1-3526.

B. ~~Subject to the conditions of subsections C and D, the~~ The amount of the reimbursement to taxpayers for tax year 1998 and the amount of the payments to treasurers for tax years after 1998 shall be 100 percent for qualifying vehicles with a value of one thousand dollars or less and for each qualifying vehicle with a value of more than one thousand dollars shall be as follows:

Percentage Level

1. For any tax year beginning in	12.5 percent of the reimbursable
calendar year 1998	amount for each qualifying vehicle
2. For any tax year beginning in	27.5 percent of the reimbursable
calendar year 1999	amount for each qualifying vehicle
3. For any tax year beginning in	47.5 percent of the reimbursable
calendar year 2000	amount for each qualifying vehicle
4. For any tax year -years beginning in	70 percent of the reimbursable
calendar year 2001, 2002, 2003, or 2004	amount for each qualifying vehicle

1411
1412 5. For any tax year beginning in 100 percent of the reimbursable
1413
1414 calendar year ~~2002~~ 2005 and tax amount for each qualifying vehicle
1415
1416 years thereafter
1417

1418 C. Notwithstanding the schedule set forth in subsection B, the percentage level for each qualifying
1419 vehicle to be paid by the Commonwealth for a tax year *beginning in any calendar year prior to*
1420 *calendar year 2005* shall not be increased at the beginning of any calendar year above the percentage
1421 level paid by the Commonwealth in the preceding tax year if:

1422 1. Actual general fund revenues for a fiscal year, including transfers, are less than the projected
1423 general fund revenues, as reported in the general appropriation act in effect at that time, by one-half of
1424 one percent or more of the amount of actual general fund revenues for such fiscal year;

1425 2. The general fund revenue forecast provided by the Governor in December pursuant to § 2.2-1503
1426 indicates that general fund revenues, excluding transfers, for any fiscal year will be less than five
1427 percent greater than general fund revenues for the immediately preceding fiscal year; or

1428 3. The general fund revenue forecast provided by the Governor in December pursuant to § 2.2-1503
1429 indicates that total general fund revenues available for appropriation, including transfers, for either of the
1430 fiscal years covered by the general appropriation act in effect at that time will be less than the general
1431 fund appropriations for such fiscal year or years.

1432 D. If the percentage level remains the same for consecutive tax years, the percentage level to be used
1433 in the following tax year shall remain the same unless none of the conditions described in subsection C
1434 have occurred, in which event the amount to be paid by the Commonwealth for the immediately
1435 following tax year shall be equal to the next highest percentage amount listed in subsection B.

1436 E. An amount equal to the percentage of the reimbursable amount as determined under subdivisions
1437 B 2 through B 5 shall appear as a deduction on the tangible personal property tax bill for qualifying
1438 vehicles, as provided by subsection E of § 58.1-3912.

1439 1. In the event the General Assembly changes the percentage of the reimbursable amount as
1440 described under subsection B for the current tax year and a locality has already printed its tangible
1441 personal property tax bills for qualifying vehicles for the year that the percentage is changed, the
1442 following procedures shall apply:

1443 a. If the percentage of the reimbursable amount is decreased for the current tax year and the taxpayer
1444 has paid the assessment, the locality may (i) levy an additional amount for the amount of the difference
1445 between the percentage of the reimbursable amount for the tax year reflected on the original assessment
1446 and the percentage of the reimbursable amount for the tax year as modified by the General Assembly in
1447 the current year or (ii) carry forward the additional levy and include it on the subsequent tax bill,
1448 provided such levy is not subject to penalty and interest.

1449 b. If the percentage of the reimbursable amount is increased for the current tax year and the taxpayer
1450 has paid the assessment, the locality shall issue a refund to the taxpayer for the amount of the difference
1451 between the percentage of the reimbursable amount for the tax year reflected on the original assessment
1452 and the percentage of the reimbursable amount for the tax year as modified by the General Assembly in
1453 the current tax year. Such refunds shall be issued by the treasurer no later than thirty days after receipt
1454 of the payment from the Commonwealth pursuant to § 58.1-3526.

1455 2. In the event the General Assembly changes the percentage of the reimbursable amount as
1456 described under subsection B before a locality has printed its tangible personal property tax bills for
1457 qualifying vehicles, the following procedures shall apply:

1458 a. If the percentage of the reimbursable amount is decreased for the current tax year, the locality may
1459 adjust each taxpayer's tangible personal property tax bill to reflect the changes made by the General
1460 Assembly to the percentage of the reimbursable amount.

1461 b. If the percentage of the reimbursable amount is increased for the current tax year, the locality
1462 shall adjust each taxpayer's tangible personal property tax bill to reflect the changes made by the
1463 General Assembly to the percentage of the reimbursable amount.

1464 § 58.1-3833. County food and beverage tax.

1465 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human
1466 consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed ~~eight~~
1467 ~~and one-half percent, when added to the state and local general sales and use tax, four percent~~ of the
1468 amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold
1469 through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as
1470 well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and
1471 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.

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. 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.

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

B. Notwithstanding the provisions of subsection A of this section, any county with a population of at least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county having a county manager plan of government are 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 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

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

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

E. Notwithstanding any other provision of this section, no locality 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.

§ 58.1-3840. Certain excise taxes permitted.

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 may impose excise taxes on ~~cigarettes~~, admissions, transient room rentals, meals, and travel campgrounds, provided that no such taxes may be imposed on food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. 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

1533 levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums and
1534 amphitheatres.

1535 **2. That the provisions of this act amending § 58.1-901 of the Code of Virginia shall only apply to**
1536 **estates of persons who die after December 31, 2003.**

1537 **3. That any revenues distributed to a county, city, or town pursuant to this act shall not be used**
1538 **to calculate or reduce the share of federal, state, or local revenues or funds otherwise available to**
1539 **counties, cities, and towns of this Commonwealth, nor shall they be used to calculate or reduce**
1540 **any allocation of revenues or funds made pursuant to Title 33.1 of the Code of Virginia. Such**
1541 **share or allocation of revenues or funds that shall not be reduced includes, but is not limited to,**
1542 **state basic aid payments.**

1543 **4. That the Department of Taxation shall promulgate all necessary and reasonable regulations to**
1544 **govern the administration of sales and use taxes pursuant to the provisions of this act, including,**
1545 **but not limited to, a bracket system for the collection of sales and use taxes in the Commonwealth**
1546 **on transactions of five dollars or less.**

1547 **5. That the amendments to §§ 3.1-1111, 58.1-3523, and 58.1-3524 shall be effective January 1,**
1548 **2005.**

1549 **6. That §§ 58.1-611.1, 58.1-627, 58.1-628, and 58.1-3536 and Article 7 (§§ 58.1-3830, 58.1-3831 and**
1550 **58.1-3832) of Chapter 38 of Title 58.1 of the Code of Virginia are repealed effective July 1, 2004.**