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## SENATE BILL NO. 1135

Offered January 12, 2005

Prefiled January 12, 2005

A *BILL to amend and reenact §§ 58.1-600 through 58.1-604, 58.1-605, 58.1-606, 58.1-609.3, 58.1-609.5, 58.1-609.10, 58.1-609.13, 58.1-610, 58.1-610.1, 58.1-611.1, 58.1-612, 58.1-613, 58.1-615, 58.1-618, 58.1-621, 58.1-622, 58.1-623, 58.1-635, 58.1-3833, and 58.1-3840 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 58.1-606.1, 58.1-606.2, 58.1-628.3, 58.1-635.1, 58.1-635.2, and by adding in Chapter 6 of Title 58.1 a section numbered 58.1-639.1, relating to the Virginia Streamlined Retail Sales and Use Tax Act.*

Patron—Hanger

Referred to Committee on Finance

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

1. That §§ 58.1-600 through 58.1-604, 58.1-605, 58.1-606, 58.1-609.3, 58.1-609.5, 58.1-609.10, 58.1-609.13, 58.1-610, 58.1-610.1, 58.1-611.1, 58.1-612, 58.1-613, 58.1-615, 58.1-618, 58.1-621, 58.1-622, 58.1-623, 58.1-635, 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 58.1-606.1, 58.1-606.2, 58.1-628.3, 58.1-635.1, 58.1-635.2, and by adding in Chapter 6 of Title 58.1 a section numbered 58.1-639.1, as follows:

§ 58.1-600. Short title.

This chapter shall be known and may be cited as the "Virginia *Streamlined* Retail Sales and Use Tax Act."

§ 58.1-601. Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter.

B. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance which the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

C. 1. *The General Assembly has determined that it is in the best interest of the Commonwealth to simplify and modernize the retail sales and use tax administration in order to substantially reduce the burden of tax compliance. In furtherance of these goals, effective beginning on and after July 1, 2006, the Virginia Retail Sales and Use Tax Act shall be amended and renamed the Virginia Streamlined Retail Sales and Use Tax Act to conform to the requirements of the national Streamlined Sales and Use Tax Agreement.*

2. *The Tax Commissioner, one representative appointed by the Governor, and two representatives appointed by the General Assembly, shall serve on the national Governing Board charged with administering the Streamlined Sales and Use Tax Agreement.*

3. *The Tax Commissioner shall report annually, prior to December 1, to the Governor and the Chairmen of the Senate Finance, House Finance, and House Appropriation Committees whether the Commonwealth's retail sales and use tax is in substantial compliance with the Streamlined Sales and Use Tax Agreement and recommend any legislative changes necessary to ensure that the Commonwealth will continue to be in substantial compliance with the requirements of the Streamlined Sales and Use Tax Agreement.*

§ 58.1-602. Definitions.

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

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Agent" means a person appointed by a seller to represent the seller.

"Agreement" means the *Streamlined Sales and Use Tax Agreement* as adopted November 12, 2002, and amendments thereto.

"Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

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59 "Amplification, transmission and distribution equipment" means, but is not limited to, production,  
60 distribution, and other equipment used to provide Internet-access services, such as computer and  
61 communications equipment and software used for storing, processing and retrieving end-user subscribers'  
62 requests.

63 "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with  
64 the object of gain, benefit or advantage, either directly or indirectly.

65 "Cost price" means the actual cost of an item or article of tangible personal property computed in the  
66 same manner as the sales price as defined in this section without any deductions therefrom on account  
67 of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

68 "Certified automated system" (CAS) means software certified under the Agreement to calculate the  
69 tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the  
70 appropriate state, and maintain a record of the transaction.

71 "Certified service provider" (CSP) means an agent certified under the Agreement to perform all the  
72 seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

73 "Computer" means an electronic device that accepts information in digital or similar form and  
74 manipulates it for a result based on a sequence of instructions.

75 "Computer software" means a set of coded instructions designed to cause a computer or automatic  
76 data-processing equipment to perform a task.

77 "Custom program" means a computer program which is specifically designed and developed only for  
78 one customer. The combining of two or more prewritten programs does not constitute a custom  
79 computer program. A prewritten program that is modified to any degree remains a prewritten program  
80 and does not become custom.

81 "Delivery charges" means charges by the seller of personal property or services for preparation and  
82 delivery to a location designated by the purchaser of personal property or services including, but not  
83 limited to, transportation, shipping, postage, handling, crating, and packing.

84 If a shipment includes (i) tangible personal property exempt from the tax imposed by this chapter,  
85 including the tax imposed pursuant to the authority granted in § 58.1-605 and § 58.1-606, and (ii)  
86 tangible personal property upon which the tax imposed under this chapter is applicable, including the  
87 tax imposed pursuant to the authority granted in § 58.1-605 and § 58.1-606, the seller shall allocate the  
88 delivery charge to the tax-exempt and taxable property by using:

89 1. a percentage based on the total sales prices of the taxable property compared to the total sales  
90 prices of all tangible personal property in the shipment;

91 2. a percentage based on the total weight of the taxable property compared to the total weight of all  
92 tangible personal property in the shipment.

93 The seller shall collect and remit to the Tax Commissioner the tax imposed by this chapter, including  
94 the tax imposed pursuant to the authority granted in § 58.1-605 and § 58.1-606, on the percentage of  
95 the delivery charge allocated to the taxable property, but shall not be required to collect and remit such  
96 taxes on the percentage of the delivery charge allocated to the tangible personal property exempt from  
97 the tax imposed by this chapter, including the tax imposed pursuant to the authority granted in  
98 § 58.1-605 and § 58.1-606.

99 "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

100 1. Contains one or more of the following dietary ingredients:

101 a. A vitamin;

102 b. A mineral;

103 c. An herb or other botanical;

104 d. An amino acid;

105 e. A dietary substance for use by humans to supplement the diet by increasing the total dietary  
106 intake; or

107 f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described in  
108 above; and

109 2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not  
110 intended for ingestion in such a form, is not represented as conventional food and is not represented for  
111 use as a sole item of a meal or of the diet; and

112 3. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box  
113 found on the label and as required pursuant to 21 C.F.R. § 101.36.

114 "Distribution" means the transfer or delivery of tangible personal property for use, consumption, or  
115 storage by the distributee, and the use, consumption, or storage of tangible personal property by a  
116 person who has processed, manufactured, refined, or converted such property, but does not include the  
117 transfer or delivery of tangible personal property for resale or any use, consumption, or storage  
118 otherwise exempt under this chapter.

119 "Drug" means a compound, substance or preparation, and any component of a compound, substance  
120 or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or

2. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

3. Intended to affect the structure or any function of the body.

"Durable medical equipment" means equipment including repair and replacement parts for same, but does not include mobility-enhancing equipment, which:

1. Can withstand repeated use; and

2. Is primarily and customarily used to serve a medical purpose; and

3. Generally is not useful to a person in the absence of illness or injury; and

4. Is not worn in or on the body.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, food sold through vending machines, prepared food or food sold by a seller whose proper primary North American Industry Classification System (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries).

"Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

"Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or § 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into this Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from this Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

~~"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.~~

"Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

1. Lease or rental does not include:

a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

b. A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of \$100 or one percent of the total required payments; or

c. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property.

2. Lease or rental does include agreements covering motor vehicles and trailers where the amount of

182 consideration may be increased or decreased by reference to the amount realized upon sale or  
 183 disposition of the property as defined in 26 USC § 7701(h)(1), as amended or renumbered, or successor  
 184 provisions.

185 3. This definition shall be used for sales and use tax purposes regardless if a transaction is  
 186 characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue  
 187 Code, or other provisions of federal, state or local law.

188 4. This definition shall be applied only prospectively from July 1, 2006, and shall have no retroactive  
 189 impact on existing leases or rentals.

190 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting  
 191 with the handling and storage of raw materials at the plant site and continuing through the last step of  
 192 production where the product is finished or completed for sale and conveyed to a warehouse at the  
 193 production site, and also includes equipment and supplies used for production line testing and quality  
 194 control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and  
 195 magazine printing when such activities are performed by the publisher of any newspaper or magazine  
 196 for sale daily or regularly at average intervals not exceeding three months.

197 The determination whether any manufacturing, mining, processing, refining or conversion activity is  
 198 industrial in nature shall be made without regard to plant size, existence or size of finished product  
 199 inventory, degree of mechanization, amount of capital investment, number of employees or other factors  
 200 relating principally to the size of the business. Further, "industrial in nature" shall include, but not be  
 201 limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the  
 202 Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

203 "Model 1 seller" means a seller that has selected a CSP as its agent to perform all the seller's sales  
 204 and use tax functions, other than the seller's obligation to remit tax on its own purchases.

205 "Model 2 seller" means a seller that has selected a CAS to perform part of its sales and use tax  
 206 functions, but retains responsibility for remitting the tax.

207 "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales  
 208 revenue of at least \$500 million, has a proprietary system that calculates the amount of tax due each  
 209 jurisdiction, and has entered into a performance agreement with the member states that establishes a tax  
 210 performance standard for the seller. As used in this definition, a seller includes an affiliated group of  
 211 sellers using the same proprietary system.

212 "Modular building home" means, ~~but shall not be limited to,~~ single and multifamily houses,  
 213 ~~apartment units, commercial buildings,~~ and permanent additions thereof, comprised of one or more  
 214 sections that are intended to become real property, primarily constructed at a location other than the  
 215 permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as  
 216 regulated by the Virginia Department of Housing and Community Development, and shipped with most  
 217 permanent components in place to the site of final assembly. For purposes of this chapter, a modular  
 218 building home shall not include a mobile office as defined in § 58.1-2401 or any manufactured building  
 219 subject to and certified under the provisions of the National Manufactured Housing Construction and  
 220 Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

221 "Modular building homes manufacturer" means a person or corporation who owns or operates a  
 222 manufacturing facility and is engaged in the fabrication, construction and assembling of building  
 223 supplies and materials into modular buildings homes, as defined in this section, at a location other than  
 224 at the site where the modular building home will be assembled on the permanent foundation and may or  
 225 may not be engaged in the process of affixing the modules to the foundation at the permanent site.

226 "Modular building homes retailer" means any person who purchases or acquires a modular building  
 227 home from a modular building homes manufacturer, or from another person, for subsequent sale to a  
 228 customer residing within or outside of the Commonwealth, with or without installation of the modular  
 229 building home to the foundation at the permanent site.

230 "Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of  
 231 the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all  
 232 applicable motor vehicle sales and use taxes have been paid.

233 "Occasional sale" means a sale of tangible personal property not held or used by a seller in the  
 234 course of an activity for which he is required to hold a certificate of registration, including the sale or  
 235 exchange of all or substantially all the assets of any business and the reorganization or liquidation of  
 236 any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in  
 237 number, scope and character to constitute an activity requiring the holding of a certificate of registration.

238 "Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for  
 239 purposes of this chapter only, shall also include Internet service regardless of whether the provider of  
 240 such service is also a telephone common carrier.

241 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,  
 242 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,  
 243 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body

politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The over-the-counter drug label includes:

1. A "Drug Facts" panel; or
2. A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

Over-the-counter drugs do not include "dietary supplements."

"Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

"Prepared food" means:

1. Food sold in a heated state or heated by the seller; and
2. Two or more food ingredients mixed or combined by the seller for sale as a single item; and
3. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

"Prepared food" in subdivision 2 does not include:

- a. Food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses; or

- b. Food sold in an unheated state by weight or volume as a single item; or

- c. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

"Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.

"Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software"; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

"Purchase price" or cost price applies to the measure subject to use tax and has the same meaning as sales price.

"Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

"Registered under the agreement" means the registration by a seller with the member states under the central registration system provided in Article IV of the Agreement.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; and (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a

certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with this Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

*"Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.*

*"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in this Commonwealth.*

*"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.*

*"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price, or (iii) separately stated local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.*

*"Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:*

*1. The seller's cost of the property sold;*

*2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*

*3. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*

*4. Delivery charges;*

*5. Installation charges;*

*6. The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and*

*7. Credit for any trade-in, as determined by state law.*

*"Sales price" shall not include:*

*a. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*

*b. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;*

*c. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and*

*d. Any consideration received by the seller from a party other than the purchaser that is directly related to a price reduction or discount on the sale. However, sales price shall include the value of a manufacturer's coupon.*

*"Seller" means a person making sales, leases, or rentals of personal property or services.*

*"State" means any state of the United States and the District of Columbia.*

*"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in this Commonwealth, or for any purpose other than sale at retail in the regular course of business.*

*"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software. The term "tangible personal property" shall also include telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes.*

*"Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.*

*"Transient accommodations" means any room or rooms, lodgings, or accommodations furnished for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished for a consideration.*

*"Transient accommodations" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with this Commonwealth or not. The right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed for transient accommodations; provided, however, that the term or time period involved is for seven years or more.*

*"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone.*

*"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.*

*"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.*

*"Video programmer" means a person or entity that provides video programming to end-user subscribers.*

*"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.*

*§ 58.1-603. Imposition of sales tax.*

*A. 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 percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:*

*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.*

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

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

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

434 *B. The tax levied under this section shall apply to persons who make sales of tangible personal*  
435 *property to persons for resale when because of the operation of the business, or its very nature, or the*  
436 *lack of a place of business in which to display a certificate of registration, or the lack of a place of*  
437 *business in which to keep records, or the lack of adequate records, or because such persons are minors*  
438 *or transients, or because such persons are engaged in essentially service businesses, or for any other*  
439 *reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing*  
440 *such business operations. The Tax Commissioner is authorized to promulgate regulations requiring*  
441 *vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such*  
442 *tangible personal property to such persons and may refuse to issue certificates of registration to such*  
443 *persons.*

444 § 58.1-604. Imposition of use tax.

445 There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a  
446 tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of  
447 such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount  
448 of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and  
449 after August 1, 2004:

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

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

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

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

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

471 § 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes;  
472 collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

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

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

480 C. The council of any city and the governing body of any county desiring to impose a local sales tax  
481 under this section may do so by the adoption of an ordinance stating its purpose and referring to this  
482 section, and providing that such ordinance shall be effective on the first day of a ~~month~~ *calendar*  
483 *quarter after a minimum of at least 60 days after its adoption* ~~notice to sellers~~. A certified copy of such  
484 ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after  
485 its adoption.

486 D. Any local sales tax levied under this section shall be administered and collected by the Tax  
487 Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

488 E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid  
489 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 no discount under § 58.1-622 shall be allowed on a local use tax.

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

1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yeas and nays vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution calendar quarter after a minimum of at least 60 days notice to sellers. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

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

C. Any local use 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 use tax.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is 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. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. In providing such break down, out-of-state dealers shall utilize and rely on the database of localities in this Commonwealth provided for under § 58.1-606.2. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

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

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

§ 58.1-606.1. Situs of local sales and use tax.

For purposes of determining the situs of the transaction subject to taxation under §§ 58.1-605 and 58.1-606:

A. For sales made from business locations within the Commonwealth:

1. When the product is received by the purchaser at a business location of the dealer, the sale is sourced to the city or county in which the dealer's business is located. 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.

2. When the product is delivered to the purchaser at a location within this Commonwealth, other than the business location of the dealer, the sale is sourced to the city or county in which the dealer's business is located, without regard to the city or county of possible use by the purchaser.

B. For sales made from business locations without the Commonwealth:

1. When the product is not received by the purchaser at a business location of the dealer, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the dealer.

2. When subsection B 1 does not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the dealer that are maintained in the ordinary course of the dealer's business when use of this address does not constitute bad faith.

3. When subsections B 1 and B 2 do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

4. When none of the previous rules of subsections B 1, B 2, or B 3 apply, including the circumstance in which the dealer is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped by the dealer.

§ 58.1-606.2. Locality database required.

For purposes of determining the correct local jurisdiction when applying the situs requirements set forth in subsection B of § 58.1-606.1, the Department shall develop and make available to all dealers a database that assigns each five- and nine-digit zip code within the Commonwealth to the proper local jurisdiction.

§ 58.1-609.3. Commercial and industrial exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling, extraction, refining, or processing of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel.

3. Tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels

covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

5. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

7. Meals furnished by restaurants or food service operators to employees as a part of wages.

8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and supplies and materials used directly in maintaining and preparing textile products for rental or leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile products.

9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas production, including gas, natural gas, and coalbed methane gas.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption directly in the rendition of their services.

11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or photocopying of products for sale or resale.

12. From July 1, 1994, and ending July 1, 2006, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, refining, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," "refining," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind possessing space flight capability, including the components thereof, irrespective of whether such facility, system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal property placed on or used aboard any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and services provided to operate and maintain launch facilities, launch equipment, payload processing facilities and payload processing equipment used to conduct spaceport activities.

For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

The exemptions provided by this subdivision shall not be denied by reason of a failure, postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or any components thereof.

14. *The transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.*

§ 58.1-609.5. Service exemptions.

The tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or § 58.1-606 shall not apply to the following:

A. 1. Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made; services rendered by repairmen for which a separate charge is made; and services not involving an exchange of tangible personal property which provide access to or use of the international network of computer systems commonly known as the Internet and any other related electronic communication service, including software, data, content and other information services delivered electronically via the Internet.

2. An amount separately charged for labor or services rendered in installing, applying, remodeling or repairing property sold.

3. ~~Transportation charges separately stated.~~

43. Separately stated charges for alterations to apparel, clothing and garments.

54. Charges for gift wrapping services performed by a nonprofit organization.

65. An amount separately charged for labor or services rendered in connection with the modification of prewritten ~~programs~~ *computer software* as defined in § 58.1-602.

76. Custom programs as defined in § 58.1-602.

8. ~~The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for more than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration.~~

9. ~~Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair or replacement parts and repair labor, shall be subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may purchase repair or replacement parts under a resale certificate of exemption.~~

B. Warranty plans issued by an insurance company, which constitute insurance transactions, are subject to the provisions of subdivision A 1 above.

§ 58.1-609.10. Miscellaneous exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. 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.

6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.

7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised, edited, reformatted or copied documents, including but not limited to documents stored on or transmitted by electronic media, to its client or to third parties in the course of the professional's rendition of services to its clientele.

8. School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a nonprofit college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

9. ~~Medicines, drugs~~ *Drugs*, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his professional practice, regardless of whether such practice is organized as a sole proprietorship, partnership, or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician assistants engaged in the practice of medicine, optometry, or nursing, but excluding nursing homes, clinics, and similar corporations not otherwise exempt under this section; ~~medicines and drugs~~ purchased for use or consumption by a licensed hospital; and samples of prescription drugs and ~~medicines~~ and their packaging distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). Any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed to be the user or consumer of all such medicines and drugs.

10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment, *appropriate for use in the home*, and devices, and related parts and supplies specifically designed for those products; and insulin and insulin syringes, and equipment, devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when such items or parts are purchased by or on behalf of an individual for use by such individual. ~~Durable medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or injury, and (iv) is appropriate for use in the home.~~

11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

12. Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.

13. Special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate when such equipment is prescribed by a licensed physician.

14. a. (i) Any ~~nonprescription drugs and proprietary medicines~~ *over-the-counter drugs* purchased for the cure, mitigation, treatment, or prevention of disease in human beings and (ii) any samples of ~~nonprescription drugs and proprietary medicines~~ *over-the-counter drugs* distributed free of charge by the manufacturer, including packaging materials and constituent elements and ingredients.

b. The terms "nonprescription drugs" and "proprietary medicines" term "*over-the-counter drugs*" shall be defined pursuant to regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision shall not apply to ~~cosmetics grooming and hygiene products~~.

15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code or (ii) the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

16. Tangible personal property, except property used in any form for recording and reproducing services, purchased by nonprofit churches that are exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church membership while meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools. The exemption for such churches shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid advertising and are used in carrying out the work of the church; gifts including food for distribution outside the public church building; and food, disposable serving items, cleaning supplies and teaching materials used in the operation of camps or conference centers by the church or an organization composed of churches that are exempt under this subdivision and which are used in carrying out the work of the church or churches.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

§ 58.1-609.13. Exceptions to § 58.1-609.10.

Notwithstanding the provisions of subdivision 1 of § 58.1-609.10, the tax imposed by a county, city or town pursuant to §§ 58.1-605 and 58.1-606 shall apply to artificial or propane gas, firewood, coal or home heating oil used for domestic consumption as defined in subdivision 1 of § 58.1-609.10, unless ~~exempted~~ *subjected to tax at a rate of zero percent* by a duly adopted ordinance of the local governing

body of a county, city or town. The provisions of this section shall not apply to fuel for domestic consumption purchased by churches organized not for profit and (i) which are exempt from taxation under § 501 (c) (3) of the Internal Revenue Code or (ii) whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606.

§ 58.1-610. Contractors.

A. Any person who contracts orally, in writing, or by purchase order, to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon, and in connection therewith to furnish tangible personal property, shall be deemed to have purchased such tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for such person shall be obligated to collect the tax to the extent required by this chapter.

B. Any person who contracts to perform services in this Commonwealth and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective of whether or not any right, title or interest in the tangible personal property becomes vested in the contractor. This subsection, however, shall not apply to the industrial materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 of § 58.1-609.6; the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set forth in subdivision 1 of § 58.1-609.2; or the exclusion for baptistries set forth in former subdivision 2 of § 58.1-609.8.

C. Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipment rental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

D. Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section. Any person selling fences, venetian blinds, window shades, awnings, storm windows and doors, locks and locking devices, floor coverings (as distinguished from the floors themselves), cabinets, kitchen equipment, window air conditioning units or other like or comparable items, shall be deemed to be a retailer of such items and not a using or consuming contractor with respect to them, whether he sells to and installs such items for contractors or other customers and whether or not such retailer fabricates such items.

E. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in this chapter, or the industrial materials and other industrial exclusions set out in § 58.1-609.3, the exclusion for baptistries set out in former subdivision 2 of § 58.1-609.8, or the partial exclusion for the sale of modular ~~buildings~~ *homes* as set out in § 58.1-610.1, or (ii) impose any sales or use tax with respect to the use in the performance of contracts with the United States, this Commonwealth, or any political subdivision thereof, of tangible personal property owned by a governmental body which actually is not used or consumed in the performance thereof.

F. Notwithstanding the other provisions of this section, any person engaged in the business of furnishing and installing locks and locking devices shall be deemed a retailer of such items and not a using or consuming contractor with respect to them.

§ 58.1-610.1. Modular homes manufacturers and retailers.

The retail sale of a modular ~~building~~ *home*, as defined by § 58.1-602, by a modular ~~building~~ *homes* manufacturer or modular ~~building~~ *homes* retailer, as defined by § 58.1-602, shall be subject to the tax authorized by this chapter upon ~~sixty~~ 60 percent of the retail sales price. If the modular ~~building~~ *homes* manufacturer has paid such tax on the cost price of materials incorporated in a modular ~~building~~ *home* that has been constructed for sale without installation, it may credit against the tax shown to be due on the return the amount of sales or use tax paid on the cost of materials used in fabricating such a modular ~~building~~ *home*.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of

§ 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. From July 1, 2005, through midnight on June 30, 2006, the tax rate on such food shall be two and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall be used for general fund purposes.

3. From July 1, 2006, through midnight on June 30, 2007, the tax rate on such food shall be two percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be used for general fund purposes.

4. On and after July 1, 2007, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 and 58.1-606.

C. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption "food and food ingredients" as defined in § 58.1-602. For the purpose of this section, "food purchased for human consumption" shall not include food and food ingredients sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is and food ingredients are consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.

A. The tax levied by §§ 58.1-603 and 58.1-604 this chapter shall be collectible from all persons who are dealers, as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under subsections B and C hereof.

B. The term "dealer," as used in this chapter, shall include every person who:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

2. Imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;

4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;

5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;

6. Is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;

7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § 58.1-613; or

8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether he holds, or is required to hold, a certificate of registration under § 58.1-613; or

9. Qualifies as a Certified Service Provider, and as an agent, contractually agrees to perform all of the sales and use tax functions required under this chapter for another dealer, except to remit use tax

on such other dealer's own purchases.

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if he:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;

2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;

3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;

4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than ~~twelve~~ 12 times during a calendar year to deliver goods sold by him;

5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;

6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;

7. Is owned or controlled by the same interests which own or control a business located within this Commonwealth;

8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under § 58.1-613; ~~or~~

9. Owns tangible personal property that is rented or leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to consumers in this Commonwealth;

10. *Makes sales into this Commonwealth and such dealer's registration is allowed under federal law; or*

11. *Volunteers under the terms of the Agreement to register and collect the tax imposed by this chapter either on its own behalf or through an agent that qualifies as a Certified Service Provider.*

D. Notwithstanding any other provision of this section, the following shall not be considered to determine whether a person who has contracted with a commercial printer for printing in the Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to be required to register under § 58.1-613:

1. The ownership or leasing by that person of tangible or intangible property located at the Virginia premises of the commercial printer which is used solely in connection with the printing contract with the person;

2. The sale by that person of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer;

3. Activities in connection with the printing contract with the person performed by or on behalf of that person at the Virginia premises of the commercial printer; and

4. Activities in connection with the printing contract with the person performed by the commercial printer within Virginia for or on behalf of that person.

E. In addition to the jurisdictional standards contained in subsection C of this section, nothing contained herein (other than subsection D) shall limit any authority which this Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of sales and use taxes by any dealer who ~~regularly or systematically~~ solicits sales within this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth which is intended to be disseminated primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

§ 58.1-613. Dealers' certificates of registration.

A. Every person *required to or* desiring to engage in or conduct business as a dealer in this Commonwealth shall file ~~with the Tax Commissioner~~ an application for a certificate of registration for each place of business in this Commonwealth.

B. Every application for a certificate of registration shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and

1043 such other information as the Tax Commissioner may require. *In addition, each applicant must set forth*  
1044 *which approved method he will use to remit the taxes collected.*

1045 C. When the required application has been made the Tax Commissioner shall issue to each applicant  
1046 a separate certificate of registration for each place of business ~~within this Commonwealth~~. A certificate  
1047 of registration is not assignable and is valid only for the person in whose name it is issued and for the  
1048 transaction of business at the place designated therein. ~~It~~ *When issued for a place of business in this*  
1049 *Commonwealth, it shall be at all times conspicuously displayed at the place for which issued.*

1050 D. Whenever any person fails to comply with any provision of this chapter or any rule or regulation  
1051 relating thereto, the Tax Commissioner, upon hearing after giving such person ~~ten~~ 10 days' notice in  
1052 writing, specifying the time and place of hearing and requiring him to show cause why his certificate of  
1053 registration should not be revoked or suspended, may revoke or suspend any one or more of the  
1054 certificates of registration held by such person. The notice may be personally served or served by  
1055 registered mail directed to the last known address of such person.

1056 E. Any person who engages in business as a dealer in this Commonwealth without obtaining a  
1057 certificate of registration, or after a certificate of registration has been suspended or revoked, and each  
1058 officer of any corporation ~~which~~ *that* so engages in business shall be guilty of a Class 2 misdemeanor.  
1059 Each day's continuance in business in violation of this section shall constitute a separate offense.

1060 F. If the holder of a certificate of registration ceases to conduct his business at the place specified in  
1061 his certificate, the certificate shall thereupon expire, and such holder shall inform the Tax Commissioner  
1062 in writing ~~within thirty~~ 30 days after he has ceased to conduct such business at such place that he has so  
1063 ceased. If the holder of a certificate of registration desires to change his place of business to another  
1064 place in this Commonwealth, he shall so inform the Tax Commissioner in writing and his certificate  
1065 shall be revised accordingly.

1066 G. This section shall also apply to any person who engages in the business of furnishing any of the  
1067 things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only  
1068 for the collection of the use tax.

1069 H. At the request of a local commissioner of revenue, the Tax Commissioner shall provide, on a  
1070 quarterly basis, a listing of new businesses in the locality which obtained a certificate of registration.

1071 § 58.1-615. Returns by dealers.

1072 A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day  
1073 of the month following the month in which the tax shall become effective, transmit to the Tax  
1074 Commissioner a return showing the gross sales, gross proceeds, or ~~cost~~ *purchase* price, as the case may  
1075 be, arising from all transactions taxable under this chapter during the preceding calendar month, and  
1076 thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or  
1077 before the twentieth day of each month, for the preceding calendar month. In the case of dealers  
1078 regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the  
1079 Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

1080 *Any dealer, not otherwise deemed to have sufficient activity within the Commonwealth that is*  
1081 *registered pursuant to subdivision B 9 or subdivision C 11 of § 58.1-612, shall remit the returns*  
1082 *required under this section within one year of the month of initial registration and annually for*  
1083 *succeeding years, except such dealer is required to file a return in the month following any month in*  
1084 *which they have accumulated \$1,000 or more in tax collected.*

1085 Notwithstanding any other provision of this chapter, a dealer may be required by the Tax  
1086 Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when,  
1087 in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would  
1088 be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or  
1089 before the twentieth day of the month following the close of the period. Each such return shall contain  
1090 all information required for monthly returns.

1091 A *With the exception of dealers, not otherwise deemed to have sufficient activity within the*  
1092 *Commonwealth registered pursuant to subdivision B 9 or subdivision C 11 of § 58.1-612, a sales or use*  
1093 *tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax*  
1094 *Commissioner any tax for the period covered by the return.*

1095 B. 1. In addition to the amounts required under the provisions of this section and § 58.1-616, any  
1096 dealer as defined by § 58.1-612 or direct payment permit holder pursuant to § 58.1-624, with taxable  
1097 sales and purchases of \$1,300,000 or greater for the 12-month period beginning July 1, and ending June  
1098 30 of the immediately preceding calendar year, shall be required to make a payment equal to 90 percent  
1099 of the sales and use tax liability for the previous June. Such tax payments shall be made on or before  
1100 the 30th day of June, if payment is made by electronic funds transfer, as defined in § 58.1-202.1. If  
1101 payment is made by other than electronic funds transfer, such payment shall be made on or before the  
1102 25th day of June. For purposes of this provision, taxable sales or purchases shall be computed without  
1103 regard to the number of certificates of registration held by the dealer. Every dealer or direct payment  
1104 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.

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

§ 58.1-618. Assessment based on estimate.

A. If any dealer fails to make a return as provided by this chapter, or a return that is false or fraudulent, it shall be the duty of the Tax Commissioner to make an estimate for the taxable period of the retail sales or distributions of such dealer, or of the gross proceeds from leases of tangible personal property, or taxable services by such dealer, or the ~~cost~~ *purchase* price of all articles of tangible personal property imported by such dealer for use or consumption in the Commonwealth, or storage by such dealer of tangible personal property to be used or consumed in the Commonwealth, and assess the tax, plus such penalties as are provided in this chapter. The Tax Commissioner shall give such dealer ~~ten~~ *10* days' notice in writing requiring such dealer to appear before him with such books, records, and papers as he may require relating to the business of such dealer for such taxable period. The Tax Commissioner may require such dealer or the agents and employees of such dealer to give testimony or to answer interrogatories under oath administered by the Tax Commissioner respecting such sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services, or the failure to make a return thereof as provided in this chapter. If any dealer fails to make any such return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of such investigation, the Tax Commissioner is hereby authorized to make the assessment based upon such information as may be available to him and to issue a memorandum of lien under § 58.1-1805 for the collection of any such taxes and penalties so found to be due. The assessment so made shall be deemed prima facie correct.

B. If the dealer has imported tangible personal property and fails to produce an invoice showing the sales price of the articles, or the invoice does not reflect the true or actual sales price as defined in this chapter, then the Tax Commissioner shall ascertain, in any manner feasible, the true sales price and assess and collect the tax, with penalties, to the extent such have accrued, on the true sales price as ascertained by him. The assessment so made shall be deemed prima facie correct.

C. In the case of the lease of tangible personal property, if the consideration given or reported by the dealer, in the judgment of the Tax Commissioner, does not represent the true or actual consideration, then the Tax Commissioner is authorized to fix the same and assess and collect the tax thereon in the same manner as above provided, with penalties to the extent such have accrued. The assessment so made shall be deemed prima facie correct.

§ 58.1-621. Bad debts.

A. In any return filed under the provisions of this chapter, the dealer may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts ~~which that~~ *which* are owed to the dealer and ~~which that~~ *which* have been found to be worthless written off as uncollectable in the dealer's books and records and eligible to be deducted for federal income tax purposes within the period covered by the return. *For purposes of this subsection, a dealer who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the dealer's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the dealer was required to file a federal income tax return.* The credit, however, shall not exceed the amount of the uncollected sales price determined by treating prior payments on each debt as consisting of the same proportion of sales price, sales tax and other nontaxable charges as in the total debt originally owed to the dealer. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the dealer shall be included in the first return filed after such collection.

B. *For purposes of calculating the amount of bad debt under subsection A, a dealer shall utilize the federal definition of "bad debt" in 26 USC § 166, excluding:*

*1. Financing charges or interest;*

1166 2. Sales or use taxes charged on the purchase price;  
 1167 3. Uncollectable amounts on property that remain in the possession of the dealer until the full  
 1168 purchase price is paid; and

1169 4. Expenses incurred in attempting to collect any debt, and repossessed property.

1170 C. When the amount of the bad debt exceeds the amount of taxable sales for the period, which the  
 1171 bad debt is written off, a refund claim may be filed under § 58.1-1823. The statute of limitations shall  
 1172 be measured from the due date of the return on which the bad debt could first be claimed. In the event  
 1173 that the dealer is a Certified Service Provider acting as an agent for another dealer, such Certified  
 1174 Service Provider must credit or refund the full amount of any bad debt allowance or refund received to  
 1175 the dealer for which they serve as agent.

1176 § 58.1-622. Discount.

1177 A. For the purpose of compensating a dealer holding a certificate of registration under § 58.1-613 for  
 1178 accounting for and remitting the tax levied by this chapter, such dealer shall be allowed the following  
 1179 percentages of the first three percent of the tax levied by §§ 58.1-603 and 58.1-604 and accounted for in  
 1180 the form of a deduction in submitting his return and paying the amount due by him if the amount due  
 1181 was not delinquent at the time of payment.

1182 Monthly Taxable Sales      Percentage

1183 \$ 0 to \$62,500      4%

1184 \$ 62,501 to \$208,000      3%

1185 \$ 208,001 and above      2%

1186 The discount allowed by this section shall be computed according to the schedule provided,  
 1187 regardless of the number of certificates of registration held by a dealer.

1188 B. In addition to the discount allowed under subsection A, the Tax Commissioner is authorized to  
 1189 allow a monetary allowance to Model 1, Model 2 and Model 3 sellers for new technology necessary to  
 1190 facilitate the collection of sales and use taxes. Such amount will be determined by the national  
 1191 Governing Board charged with administering the Streamlined Sales and Use Tax Agreement.

1192 § 58.1-623. Sales or leases presumed subject to tax; exemption certificates.

1193 A. All sales or leases are subject to the tax until the contrary is established. The burden of proving  
 1194 that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer  
 1195 unless he takes from the taxpayer a certificate to the effect that the property is exempt under this  
 1196 chapter.

1197 B. The certificate mentioned in this section shall relieve the person who takes such certificate from  
 1198 any liability for the payment or collection of the tax, except ~~upon notice~~ in the event that the person  
 1199 who fraudulently takes such certificate fails to collect the tax or solicits purchasers to participate in the  
 1200 unlawful claim of an exemption. Such certificate shall remain in effect until such time as notice is given  
 1201 from the Tax Commissioner that such certificate is no longer acceptable. ~~Such~~ The certificate may be  
 1202 either in electronic form or in paper form. In the event that the certificate is in electronic form, such  
 1203 certificate is not required to bear the signature of the purchaser. Otherwise such certificate shall be  
 1204 signed by and bear the name and address of the taxpayer; shall indicate the number of the certificate of  
 1205 registration, if any, issued to the taxpayer; shall indicate the general character of the tangible personal  
 1206 property sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket  
 1207 exemption certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. If  
 1208 an exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a  
 1209 sales and use tax exemption under § 58.1-609.11, the exemption certificate shall be valid until the  
 1210 scheduled expiration date stated on the exemption certificate.

1211 C. If a taxpayer who gives a certificate under this section makes any use of the property other than  
 1212 an exempt use or retention, demonstration, or display while holding the property for resale, distribution,  
 1213 or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of  
 1214 the time the property or service is first used by him, and the cost of the property to him shall be  
 1215 deemed the sales price of such retail sale. If the sole use of the property other than retention,  
 1216 demonstration, or display in the regular course of business is the rental of the property while holding it  
 1217 for sale, distribution, or lease, the taxpayer may elect to pay the tax on the amount of the rental charged,  
 1218 rather than the cost of the property to him.

1219 D. If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods  
 1220 and thereafter commingles these goods with other fungible goods not so purchased, but of such  
 1221 similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales  
 1222 or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the  
 1223 goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so  
 1224 commingled has been sold or distributed.

1225 § 58.1-628.3. Tax computation.

1226 A. In computing the amount of tax due pursuant to this chapter:

1. The tax computation must be carried to the third decimal place, and  
 2. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

B. Each dealer must make a one-time binding election to compute the tax due on a transaction on either an item-by-item basis or on an invoice basis.

C. The rounding rule set out in subsection A shall be applied to the aggregated amount of state and local tax due.

§ 58.1-635. Failure to file return; fraudulent return; civil penalties.

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed ~~thirty~~ 30 percent in the aggregate. In no case, however, shall the penalty be less than ~~ten dollars~~ \$10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of ~~fifty~~ 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports his gross sales, gross proceeds or ~~cost~~ purchase price, as the case may be, at ~~fifty~~ 50 percent or less of the actual amount.

C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § 58.1-15, after which interest shall accrue as provided therein.

§ 58.1-635.1. Taxability matrix, reliance on same.

A. The Department shall develop and maintain a taxability matrix, and make such matrix available to dealers. Such matrix will be in the form of an electronic database and shall set forth the taxable status, under this chapter, for each item or transaction listed in the matrix. The format of such matrix will be consistent with requirements set forth by the Governing Board charged with administering the Streamlined Sales and Use Tax Agreement.

B. In the event that an item or transaction is not contained in the matrix or absent specific guidance with respect to the taxability of an item or transaction listed in the matrix, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall apply.

C. Any dealer that can demonstrate to the satisfaction of the Tax Commissioner that such dealer failed to charge or collect the proper amount of tax due solely to the reliance on incorrect data contained in the matrix required pursuant to subsection A, shall be relieved from the liability for failing to charge or collect the proper amount of tax.

§ 58.1-635.2. Amnesty for certain registrations.

A. Any dealer, not otherwise deemed to have sufficient activity within the Commonwealth registered pursuant to subdivision B 9 or subdivision C 11 of § 58.1-612, may qualify for amnesty for previously uncollected or unpaid taxes provided the dealer was not so registered in the Commonwealth in the 12-month period preceding the effective date of the Commonwealth's participation in the Agreement. Such amnesty shall preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the dealer was not registered in the Commonwealth, provided registration occurs within 12 months of the effective date of the Commonwealth's participation in the Agreement.

B. Amnesty shall not be available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes, for sales or use taxes already paid or remitted to the Commonwealth, or for taxes collected by the dealer and not remitted.

C. The provisions of subsection A shall be applicable, absent the dealer's fraud or intentional misrepresentation of a material fact, as long as the dealer continues to be registered and continues payment or collection and remittance of applicable sales or use taxes for a period of at least 36 months.

D. The provisions of subsection A are applicable only to sales or use taxes due from the dealer in its capacity as a seller and not to sales or use taxes due from a dealer in its capacity as a buyer.

§ 58.1-639.1. Tax Commissioner's duties.

In addition to the duties set forth under § 58.1-202, the Tax Commissioner is hereby authorized to

1288 *represent the Commonwealth in administrative matters before the Governing Board charged with*  
1289 *administering the Streamlined Sales and Use Tax Agreement. Therefore, the Tax Commissioner's duties*  
1290 *include, but are not limited to:*

- 1291 1. *Filing the petition for membership;*
- 1292 2. *Completing the certificate of compliance, as necessary;*
- 1293 3. *Preparing the annual recertification for membership; and*
- 1294 4. *Representing the Commonwealth before the Governing Board in all matters related to the*  
1295 *application of the Agreement to the provisions of this chapter.*

1296 § 58.1-3833. County food and beverage tax.

1297 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human  
1298 consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four  
1299 percent of the amount charged for such food and beverages. Such tax shall not be levied on food and  
1300 beverages sold through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of  
1301 § 35.1-25, as well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores  
1302 and convenience stores selling prepared foods ready for human consumption at a delicatessen counter  
1303 shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

1304 This tax shall be levied only if the tax is approved in a referendum within the county which shall be  
1305 held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on  
1306 the filing of a petition signed by a number of registered voters of the county equal in number to 10  
1307 percent of the number of voters registered in the county, as appropriate on January 1 of the year in  
1308 which the petition is filed with the court of such county. The clerk of the circuit court shall publish  
1309 notice of the election in a newspaper of general circulation in the county once a week for three  
1310 consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall  
1311 be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such  
1312 resolution of the board of supervisors or such petition states for what projects and/or purposes the  
1313 revenues collected from the tax are to be used, then the question on the ballot for the referendum shall  
1314 include language stating for what projects and/or purposes the revenues collected from the tax are to be  
1315 used.

1316 The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and  
1317 nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently  
1318 imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection  
1319 of such tax shall be in a manner prescribed by the governing body.

1320 B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge  
1321 County, Frederick County and Arlington County are hereby authorized to levy a tax on food and  
1322 beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as  
1323 modified in subsection A above and subject to the same exemptions, not to exceed four percent of the  
1324 amount charged for such food and beverages, provided that the governing body of the respective county  
1325 holds a public hearing before adopting a local food and beverage tax, and the governing body by  
1326 unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such  
1327 terms as the governing body may by ordinance prescribe.

1328 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town  
1329 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax  
1330 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax  
1331 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.  
1332 The wrongful and fraudulent use of such collections other than remittance of the same as provided by  
1333 law shall constitute embezzlement pursuant to § 18.2-111.

1334 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section  
1335 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

1336 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this  
1337 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises  
1338 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of  
1339 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act and food  
1340 ingredients as defined in § 58.1-602, except for the following items: sandwiches, salad bar items sold  
1341 from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables,  
1342 and nonfactory sealed beverages, regardless of whether or not such items qualify as food and food  
1343 ingredients.

1344 § 58.1-3840. Certain excise taxes permitted.

1345 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any  
1346 city or town having general taxing powers established by charter pursuant to or consistent with the  
1347 provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals,  
1348 meals, and travel campgrounds, provided that no such taxes may be imposed on food and beverages sold  
1349 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 and food ingredients as defined in § 58.1-602, 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, *regardless of whether or not such items qualify as food and food ingredients.*

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

**2. That this act shall become effective on July 1, 2006.**