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**HOUSE BILL NO. 199**

Offered January 11, 2006

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*A BILL to amend and reenact §§ 58.1-602 and 58.1-2401 of the Code of Virginia, relating to sales and use tax and motor vehicle sales and use tax; definition of sale price.*

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Patron—Marshall, R.G.

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****That §§ 58.1-602 and 58.1-2401 of the Code of Virginia are amended and reenacted as follows:**

1. That §§ 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.

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

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

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

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

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

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

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

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

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

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

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

88 "Modular building retailer" means any person who purchases or acquires a modular building from a  
89 modular building manufacturer, or from another person, for subsequent sale to a customer residing  
90 within or outside of the Commonwealth, with or without installation of the modular building to the  
91 foundation at the permanent site.

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

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

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

103 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,  
104 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,  
105 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body  
106 politic or political subdivision, whether public or private, or quasi-public, and the plural of such term  
107 shall mean the same as the singular.

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

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

117 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or  
118 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90  
119 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any  
120 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for

a consideration; (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; and (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. 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 the 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.

"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 the 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, or (iv) cash rebates. 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.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the 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. The term "tangible personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"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. The term does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

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

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

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

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

193 § 58.1-2401. Definitions.

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

195 "Commissioner" shall mean the Commissioner of the Department of Motor Vehicles of the  
196 Commonwealth.

197 "Daily rental vehicle" shall mean a motor vehicle, except a motorcycle or a manufactured home as  
198 defined in § 46.2-100, used for rental as defined in this section and for the transportation of persons or  
199 property, whether on its own structure or by drawing another vehicle or vehicles.

200 "Department" shall mean the Department of Motor Vehicles of this Commonwealth, acting through  
201 its duly authorized officers and agents.

202 "Gross proceeds" shall mean the charges made or voluntary contributions received for the rental of a  
203 motor vehicle where the rental or lease agreement is for a period of less than twelve months.

204 "Mobile office" shall mean an industrialized building unit not subject to the federal regulation, which  
205 may be constructed on a chassis for the purpose of towing to the point of use and designed to be used  
206 with or without a permanent foundation, for commercial use and not for residential use; or two or more  
207 such units separately towable, but designed to be joined together at the point of use to form a single  
208 commercial structure, and which may be designed for removal to, and installation or erection on other  
209 sites.

210 "Motor vehicle" shall mean every vehicle, except for mobile office as herein defined, which is  
211 self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a  
212 motor vehicle, including manufactured homes as defined in § 46.2-100 and every device in, upon and by  
213 which any person or property is, or can be, transported or drawn upon a highway, but excepting devices  
214 moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles,  
215 other than manufactured homes, used in this Commonwealth but not required to be licensed by the  
216 Commonwealth.

217 "Rental" shall mean the transfer of the possession or use of a motor vehicle, whether or not the  
218 motor vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without  
219 the transfer of the ownership of such motor vehicle, for a period of less than twelve months. Any fee  
220 arrangement between the holder of a permit issued by the State Corporation Commission or the  
221 Department for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental  
222 under this section.

223 "Rental in the Commonwealth" shall mean any rental where a person received delivery of a motor  
224 vehicle within the Commonwealth. The term "Commonwealth" shall include all land or interest in land  
225 within the Commonwealth owned by or conveyed to the United States of America.

226 "Rentor" shall mean a person engaged in the rental of motor vehicles for consideration as defined in  
227 this section.

228 "Sale" shall mean any transfer of ownership or possession, by exchange or barter, conditional or  
229 otherwise, in any manner or by any means whatsoever, of a motor vehicle. The term shall also include a  
230 transaction whereby possession is transferred but title is retained by the seller as security. The term shall  
231 not include a transfer of ownership or possession made to secure payment of an obligation, nor shall it  
232 include a refund for, or replacement of, a motor vehicle of equivalent or lesser value pursuant to the  
233 Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.). Where the replacement motor  
234 vehicle is of greater value than the motor vehicle replaced, only the difference in value shall constitute a  
235 sale.

236 "Sale price" shall mean the total price paid for a motor vehicle and all attachments thereon and  
237 accessories thereto, as determined by the Commissioner, exclusive of any federal manufacturers' excise  
238 tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances. However, "sale  
239 price" shall not include (i) the cost of controls, lifts, automatic transmission, power steering, power  
240 brakes or any other equipment installed in or added to a motor vehicle which is required by law or  
241 regulation as a condition for operation of a motor vehicle by a handicapped person; (ii) any cash  
242 discount allowed and taken; (iii) finance charges, carrying charges, service charges, or interest from  
243 credit extended on sales of tangible personal property under conditional sale contracts or other

244 conditional contracts providing for deferred payments of the purchase price; (iv) separately stated local  
245 property taxes collected; or (v) cash rebates. Where used articles are taken in trade, or in a series of  
246 trades, as a credit or part payment on the sale of new or used articles, the tax levied by this chapter  
247 shall be paid on the net difference between the sales price of the new or used articles and the credit for  
248 the used articles.