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SENATE BILL NO. 729

Offered January 18, 2008

A BILL to amend and reenact §§ 58.1-602, 58.1-604.1, 58.1-605, 58.1-606, 58.1-608.3, 58.1-614, and 58.1-639 of the Code of Virginia, relating to the taxes and fees that may be imposed by the Northern Virginia Transportation Authority and authorizing the Authority to impose a retail sales and use tax under certain conditions.

 Patron—Saslaw

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-602, 58.1-604.1, 58.1-605, 58.1-606, 58.1-608.3, 58.1-614, and 58.1-639 of the Code of Virginia are amended and reenacted as follows:

§ 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.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is

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59 packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing,
60 any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be
61 deemed used as part of the integrated process if its use contributes, before, during, or after production,
62 to higher product quality, production yields, or process efficiencies. Except as otherwise provided by
63 law, such term shall not mean general maintenance or administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"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; (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; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the price of the meal. 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.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring,

182 lighting, equipment, and all other property used to reduce contamination or to control airflow,
183 temperature, humidity, vibration, or other environmental conditions required for the integrated process of
184 semiconductor manufacturing.

185 "Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii)
186 the related accessories, components, pedestals, bases, or foundations used in connection with the
187 operation of the equipment, without regard to the proximity to the equipment, the method of attachment,
188 or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other
189 property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or
190 maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control
191 testing of product, materials, equipment, or processes; or the measurement of equipment performance or
192 production parameters regardless of where or when the quality control, testing, or measuring activity
193 takes place, how the activity affects the operation of equipment, or whether the equipment and supplies
194 come into contact with the product.

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

198 "Tangible personal property" means personal property which may be seen, weighed, measured, felt,
199 or touched, or is in any other manner perceptible to the senses. The term "tangible personal property"
200 shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible
201 personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt
202 from all other state and local utility taxes, and (ii) manufactured signs.

203 "Use" means the exercise of any right or power over tangible personal property incident to the
204 ownership thereof, except that it does not include the sale at retail of that property in the regular course
205 of business. The term does not include the exercise of any right or power, including use, distribution, or
206 storage, over any tangible personal property sold to a nonresident donor for delivery outside of the
207 Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the
208 Commonwealth via mail or telephone. The term does not include any sale determined to be a gift
209 transaction, subject to tax under § 58.1-604.6.

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

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

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

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

223 § 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for
224 use in performing contracts.

225 A. In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of
226 § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools
227 or other equipment brought, imported or caused to be brought into this Commonwealth for use in
228 constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or
229 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant,
230 transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any
231 part thereof. ~~The~~ Except as provided herein, the rate of tax is three and one-half percent through
232 midnight on July 31, 2004, and four percent beginning on and after August 1, 2004, on all tangible
233 personal property except motor vehicles, which shall be taxed at the rate of three percent; aircraft, which
234 shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent
235 with a maximum tax of \$1,000.

236 B. In addition to all other fees, taxes, and other charges authorized under law, the Northern Virginia
237 Transportation Authority established under § 15.2-4830 is authorized to impose in the counties and
238 cities embraced by the Authority an additional use tax at the rate of 0.50 percent upon the storage or
239 use of all tangible personal property as described in subsection A (except motor vehicles, aircraft, and
240 watercraft). The revenues collected from such 0.50 percent additional use tax in such counties and cities
241 on such tangible personal property, less the applicable portion of any refunds to taxpayers, shall be
242 deposited and held in a special trust fund under the control of the State Treasurer entitled "Additional
243 Sales and Use Tax for Northern Virginia." The State Treasurer on a monthly basis shall distribute the

amounts deposited in the special fund to the Northern Virginia Transportation Authority.

No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except as otherwise provided herein, the tax under this subsection shall be administered and collected in the same manner and subject to the same penalties as provided for the local retail use tax.

If the Northern Virginia Transportation Authority imposes the tax under this subsection, then, beginning at such time that the tax is first imposed the Authority shall no longer be authorized to impose any tax or fee pursuant § 46.2-755.2, § 46.2-1167.1, subsection K of § 58.1-605, or subsection H of § 58.1-606.

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

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

A transaction taxed under §§ 58.1-604, 58.1-605, 58.1-606, 58.1-1402, 58.1-1502, or § 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

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

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

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

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

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

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the

total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

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

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

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

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

K. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation Authority and the Northern Virginia Transportation Authority may impose a retail sales tax at the rate of 5% on (i) charges for separately stated labor or services in the repair of motor vehicles and (ii) charges for the repair of a motor vehicle in cases in which the true object of the repair is a service provided within a city or county embraced by the respective Authority.

2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration by the Department, shall be deposited and held in a special trust fund under the control of the State Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads Transportation Authority or the Northern Virginia Transportation Authority as appropriate.

3. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except as otherwise provided herein, the tax under this subsection shall be administered and collected in the same manner and subject to the same penalties as provided for the local retail sales tax.

L. *In addition to all other fees, taxes, and other charges authorized under law, the Northern Virginia Transportation Authority established under § 15.2-4830 may impose a general retail sales tax at the rate of 0.50 percent in the counties and cities embraced by the Authority. The revenue generated and collected pursuant to the tax authorized under this subsection, less the applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration by the Department, shall be deposited and held in a special trust fund under the control of the State Treasurer entitled "Additional Sales and Use Tax for Northern Virginia." The State Treasurer on a monthly basis shall distribute the*

amounts deposited in the special trust fund to the Northern Virginia Transportation Authority.

No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except as otherwise provided herein, the tax under this subsection shall be administered and collected in the same manner and subject to the same penalties as provided for the local retail sales tax.

If the Northern Virginia Transportation Authority imposes the tax under this subsection, then, beginning at such time that the tax is first imposed the Authority shall no longer be authorized to impose any tax or fee pursuant § 46.2-755.2, § 46.2-1167.1, subsection K of this subsection, or subsection H of § 58.1-606.

§ 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 yea and nay 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. 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. 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

428 implementation of the changes.

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

431 H. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation
432 Authority and the Northern Virginia Transportation Authority may impose a retail use tax at the rate of
433 5% on (i) charges for separately stated labor or services for the repair of motor vehicles and (ii) charges
434 for the repair of a motor vehicle in cases in which the true object of the repair is a service provided
435 within a city or county embraced by the respective Authority.

436 2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the
437 applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration
438 by the Department, shall be deposited and held in a special trust fund under the control of the State
439 Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a
440 monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads
441 Transportation Authority or the Northern Virginia Transportation Authority as appropriate.

442 3. No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except
443 as otherwise provided herein, the tax under this subsection shall be administered and collected in the
444 same manner and subject to the same penalties as provided for the local retail use tax.

445 *1. In addition to all other fees, taxes, and other charges authorized under law, the Northern Virginia*
446 *Transportation Authority established under § 15.2-4830 may impose a retail use tax at the rate of 0.50*
447 *percent in the counties and cities embraced by the Authority. The revenue generated and collected*
448 *pursuant to the tax authorized under this subsection, less the applicable portion of any refunds to*
449 *taxpayers and after subtraction of the direct costs of administration by the Department, shall be*
450 *deposited and held in a special trust fund under the control of the State Treasurer entitled "Additional*
451 *Sales and Use Tax for Northern Virginia." The State Treasurer on a monthly basis shall distribute the*
452 *amounts deposited in the special trust fund to the Northern Virginia Transportation Authority.*

453 *No discount under § 58.1-622 shall be allowed for the tax described under this subsection. Except as*
454 *otherwise provided herein, the tax under this subsection shall be administered and collected in the same*
455 *manner and subject to the same penalties as provided for the local retail use tax.*

456 *If the Northern Virginia Transportation Authority imposes the tax under this subsection, then,*
457 *beginning at such time that the tax is first imposed the Authority shall no longer be authorized to*
458 *impose any tax or fee pursuant § 46.2-755.2, § 46.2-1167.1, subsection K of § 58.1-605, or subsection H*
459 *of this section.*

460 § 58.1-608.3. Entitlement to certain sales tax revenues.

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

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

464 "Cost," as applied to any public facility or to extensions or additions to any public facility, includes:
465 (i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of
466 the capital stock of the corporation owning the public facility and the amount to be paid to discharge
467 any obligations in order to vest title to the public facility or any part of it in the municipality; (ii)
468 expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of
469 plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land,
470 property, rights, easements and franchises acquired; (v) the cost of improvements, property or
471 equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of
472 construction or reconstruction; (viii) the cost of all labor, materials, machinery and equipment; (ix)
473 financing charges; (x) interest before and during construction and for up to one year after completion of
474 construction; (xi) start-up costs and operating capital; (xii) payments by a municipality of its share of the
475 cost of any multijurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be
476 deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to
477 the financing of the public facility. Any obligation or expense incurred by the public facility in
478 connection with any of the foregoing items of cost may be regarded as a part of the cost.

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

480 "Public facility" means (i) any auditorium, coliseum, convention center, or conference center, which
481 is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings,
482 conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is
483 owned by a foundation whose sole purpose is to benefit a state-supported university and which is
484 attached to and is an integral part of such facility, together with any lands reasonably necessary for the
485 conduct of the operation of such events; or (iii) any hotel which is attached to and is an integral part of
486 such facility. However, such public facility must be located in the City of Hampton, City of Newport
487 News, City of Norfolk, City of Portsmouth, City of Roanoke, City of Salem, City of Staunton, or City
488 of Suffolk. Any property, real, personal, or mixed, which is necessary or desirable in connection with
489 any such auditorium, coliseum, convention center, or conference center, including, without limitation,

facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. A public facility shall not include residential condominiums, townhomes, or other residential units. In addition, only a new public facility, or a public facility which will undergo a substantial and significant renovation or expansion, shall be eligible under subsection B of this section. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least 50 percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least 50 percent over that existing in the preexisting facility and shall have begun after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) of this title, as limited herein. "Sales tax revenues" does not include the revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § 33.1-23.03:1, nor shall it include the one percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § 58.1-638 on the basis of school age population. *"Sales tax revenues" also shall not include any revenue generated pursuant to subsection L of § 58.1-605 or subsection I of § 58.1-606.*

B. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, (v) on or after July 1, 2001, but before July 1, 2005, or (vi) on or after July 1, 2004, but before July 1, 2007, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such bonds, which entitlement shall not exceed 35 years, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed.

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

§ 58.1-614. Vending machine sales.

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on four and one-half percent through midnight on July 31, 2004, and five percent beginning on and after August 1, 2004, of such wholesale purchases.

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit (i) the one percent local sales and use tax, computed as provided in subsection A of this section, and (ii) *any sales and use tax imposed by the Northern Virginia Transportation Authority, computed as provided in subsection A.*

C. The provisions of subsections A and B of this section shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than 10 cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

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

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

551 § 58.1-639. Transitional provisions.

552 A. To the extent of the one-half percent increase in the state sales and use tax rate effective August
553 1, 2004, enacted by the 2004 Special Session I of the Virginia General Assembly sales and use taxes
554 authorized under subsection L of § 58.1-605 and subsection I of § 58.1-606, the Tax Commissioner,
555 upon application of the purchaser in accordance with regulations promulgated by the Commissioner,
556 shall have the authority to refund state such sales or use taxes paid on purchases of tangible personal
557 property made pursuant to bona fide real estate construction contracts, contracts for the sale of tangible
558 personal property, and leases, provided that the real estate construction contract, contract for the sale of
559 tangible personal property or lease is entered into prior to the date of enactment of such increase in the
560 state sales and use tax rate that such taxes are first imposed by the Northern Virginia Transportation
561 Authority established under § 15.2-4830; and further provided that the date of delivery of the tangible
562 personal property is on or before October 31, 2004 within 90 days after the date that such taxes are
563 first imposed. The term "bona fide contract," when used in this section in relation to real estate
564 construction contracts, shall include but not be limited to those contracts which are entered into prior to
565 the enactment of such increase in the state sales and use tax rate date that the taxes authorized under
566 subsection L of § 58.1-605 and subsection I of § 58.1-606 are first imposed by the Northern Virginia
567 Transportation Authority, provided that such contracts include plans and specifications.

568 B. Notwithstanding the foregoing October 31, 2004, delivery date requirement, with respect to bona
569 fide real estate construction contracts which contain a specific and stated date of completion, the date of
570 delivery of such tangible personal property shall be on or before the completion date of the applicable
571 project.

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

575 D. Refunds and interest pursuant to this section shall be paid from the "Additional Sales and Use
576 Tax for Northern Virginia" special trust fund.

577 2. That any revenues generated pursuant to the provisions of this act shall not be used to calculate
578 or reduce the share of local, federal, or state revenues otherwise available to the Counties of
579 Arlington, Fairfax, Loudoun, or Prince William or the Cities of Alexandria, Fairfax, Falls Church,
580 Manassas, or Manassas Park. Further, any such revenues and moneys shall not be included in any
581 computation of, or formula for, a locality's ability to pay for public education, upon which
582 appropriations of state revenues to local governments for public education are determined.