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**SENATE BILL NO. 471**

Offered January 9, 2008

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A *BILL to amend and reenact §§ 58.1-602, 58.1-3700.1, 58.1-3703, 58.1-3706, 58.1-3819, and 58.1-3840 of the Code of Virginia, relating to the short-term rental of dwellings.*

Patron—Hanger

Referred to Committee on Finance

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

**1. That §§ 58.1-602, 58.1-3700.1, 58.1-3703, 58.1-3706, 58.1-3819, and 58.1-3840 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 packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing,

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59 any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be  
60 deemed used as part of the integrated process if its use contributes, before, during, or after production,  
61 to higher product quality, production yields, or process efficiencies. Except as otherwise provided by  
62 law, such term shall not mean general maintenance or administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

120 "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, *including any dwelling used in a short-term real property rental business as defined in § 58.1-3700.1*; (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 § 58.1-3700.1. Definitions.

224 For the purposes of this chapter and any local ordinances adopted pursuant to this chapter, unless  
225 otherwise required by the context:

226 "Affiliated group" means:

227 1. One or more chains of corporations subject to inclusion connected through stock ownership with a  
228 common parent corporation which is a corporation subject to inclusion if:

229 a. Stock possessing at least eighty percent of the voting power of all classes of stock and at least  
230 eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion,  
231 except the common parent corporation, is owned directly by one or more of the other corporations  
232 subject to inclusion; and

233 b. The common parent corporation directly owns stock possessing at least eighty percent of the  
234 voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at  
235 least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock"  
236 does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation  
237 subject to inclusion" means any corporation within the affiliated group irrespective of the state or  
238 country of its incorporation; and the term "receipts" includes gross receipts and gross income.

239 2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock  
240 possessing:

241 a. At least eighty percent of the total combined voting power of all classes of stock entitled to vote  
242 or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

243 b. More than fifty percent of the total combined voting power of all classes of stock entitled to vote

or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

3. Two or more entities if such entities satisfy the requirements in subdivision 1 or 2 of this definition as if they were corporations and the ownership interests therein were stock.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of § 58.1-3715 or unless the local ordinance provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

"Definite place of business" means an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

"Entity" means a business organization, other than a sole proprietorship, that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the Commonwealth or another state.

"Financial services" means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, or other investments.

"Fuel sale" or "fuel sales" shall mean retail sales of alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in § 58.1-2201.

"Gas retailer" means a person or entity engaged in business as a retailer offering to sell at retail on a daily basis alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in § 58.1-2201.

"Gross receipts" means the whole, entire, total receipts, without deduction.

"License year" means the calendar year for which a license is issued for the privilege of engaging in business.

"Professional services" means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

"Purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods,

305 wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A  
306 wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares  
307 and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of  
308 manufacture.

309 "Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or  
310 appraisal of real property.

311 *"Short-term real property rental business" means renting or leasing for a fee or other charge a*  
312 *dwelling or any portion thereof for occupancy by transients for fewer than 30 consecutive days,*  
313 *provided that (i) advertising is used for purposes of renting or leasing the dwelling to transients who*  
314 *are not known to the owner or lessor (or any agent thereof) of the dwelling, or (ii) such occupancy of*  
315 *the dwelling occurs within 30 days of another such occupancy of the dwelling or such occupancy of the*  
316 *dwelling occurs within the same calendar year as three or more other such occupancies of the dwelling.*

317 A person engaged in the short-term real property rental business shall be deemed to be engaged in  
318 business for purposes of this chapter.

319 § 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of  
320 authority.

321 A. The governing body of any county, city or town may charge a fee for issuing a license in an  
322 amount not to exceed \$100 for any locality with a population greater than 50,000, \$50 for any locality  
323 with a population of 25,000 but no more than 50,000 and \$30 for any locality with a population smaller  
324 than 25,000. For purposes of this section, population may be based on the most current final population  
325 estimates of the Weldon Cooper Center for Public Service of the University of Virginia. Such governing  
326 body may levy and provide for the assessment and collection of county, city or town license taxes on  
327 businesses, trades, professions, occupations and callings and upon the persons, firms and corporations  
328 engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii)  
329 subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of  
330 gross receipts of each business upon which a license fee is charged. Any county, city or town with a  
331 population greater than 50,000 shall reduce the fee to an amount not to exceed \$50 by January 1, 2000.  
332 The ordinance imposing such license fees and levying such license taxes shall include the provisions of  
333 § 58.1-3703.1.

334 B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i)  
335 the design, development or other creation of computer software for lease, sale or license and (ii) private  
336 businesses and industries entering into agreements for the establishment, installation, renovation,  
337 remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned  
338 by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

339 C. No county, city, or town shall impose a license fee or levy any license tax:

340 1. On any public service corporation or any motor carrier, common carrier, or other carrier of  
341 passengers or property formerly certified by the Interstate Commerce Commission or presently registered  
342 for insurance purposes with the Surface Transportation Board of the United States Department of  
343 Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by  
344 other provisions of law;

345 2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the  
346 planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and  
347 sheds of such county, city or town, provided such products are grown or produced by the person  
348 offering them for sale;

349 3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other  
350 publication issued daily or regularly at average intervals not exceeding three months, provided the  
351 publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating  
352 or conducting any radio or television broadcasting station or service;

353 4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at  
354 wholesale at the place of manufacture;

355 5. On a person engaged in the business of severing minerals from the earth for the privilege of  
356 selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712  
357 and 58.1-3713;

358 6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for  
359 resale unless such wholesaler has a definite place of business or store in such county, city or town. This  
360 subdivision shall not be construed as prohibiting any county, city or town from imposing a local license  
361 tax on a peddler at wholesale pursuant to § 58.1-3718;

362 7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of  
363 such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel  
364 trailer parks, lodging houses, rooming houses and, boardinghouses, or dwellings used in a short-term  
365 real property rental business; however, any county, city or town imposing such a license tax on January  
366 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

8. —Repealed.]

9. On or measured by receipts for management, accounting, or administrative services provided on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by an entity which is a member of an affiliated group of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated entities from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in § 51.5-98;

15. —Expired.]

16. —Repealed.]

17. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;

18. (a) On or measured by receipts of a charitable nonprofit organization except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "charitable nonprofit organization" means an organization which is described in Internal Revenue Code § 501 (c) (3) and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning.

(b) On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations;

19. On any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located provided the locality is otherwise authorized to tax such businesses and rental of real estate;

20. On total assessments paid by condominium unit owners for common expenses. "Common expenses" and "unit owner" have the same meanings as in § 55-79.41; or

21. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof or by the United States as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.

§ 58.1-3706. Limitation on rate of license taxes.

A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703, no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, or any other provision of this title or any charter, shall be imposed on any person whose gross receipts from a business, profession or occupation subject to licensure are less than: (i) \$100,000 in any locality with a population greater than 50,000; or (ii) \$50,000 in any locality with a population of 25,000 but no more than 50,000. Any business with gross receipts of more than \$100,000, or \$50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the class of enterprise listed:

428 1. For contracting, and persons constructing for their own account for sale, sixteen cents per \$100 of  
429 gross receipts;

430 2. For retail sales, twenty cents per \$100 of gross receipts;

431 3. For financial, real estate and professional services, fifty-eight cents per \$100 of gross receipts; and

432 4. For repair, personal and business services, and all other businesses and occupations not specifically  
433 listed or excepted in this section, thirty-six cents per \$100 of gross receipts.

434 The rate limitations prescribed in this section shall not be applicable to license taxes on (i)  
435 wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be  
436 governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by  
437 § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi)  
438 itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums,  
439 arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public,  
440 which shall be governed by § 58.1-3729; (viii) savings institutions and credit unions, which shall be  
441 governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct  
442 sellers, which shall be governed by § 58.1-3719.1.

443 B. Any county, city or town which had, on January 1, 1978, a license tax rate, for any of the  
444 categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a  
445 higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the  
446 following conditions:

447 1. A locality may not increase a rate on any category which is at or above the maximum prescribed  
448 for such category in subsection A.

449 2. If a locality increases the rate on a category which is below the maximum, it shall apply all  
450 revenue generated by such increase to reduce the rate on a category or categories which are above such  
451 maximum.

452 3. A locality shall lower rates on categories which are above the maximums prescribed in subsection  
453 A for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter,  
454 than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue  
455 received from all categories in tax year 1980, plus one-third of the amount, if any, by which such  
456 revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for  
457 each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the  
458 increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If  
459 in any tax year the amount of revenues received from all categories exceeds the revenue base for such  
460 year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the  
461 maximum shall be subtracted from the revenue base for such year. The resulting amount shall be  
462 allocated to the category or categories with rates above the maximum in a manner determined by the  
463 locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates  
464 shall be applicable to such category or categories for the second tax year following the year whose  
465 revenue was used to make the calculation.

466 C. Any person engaged in the short-term rental business as defined in § 58.1-3510 shall be classified  
467 in the category of retail sales for license tax rate purposes. *Any person engaged in the short-term real*  
468 *property rental business shall be classified in the category described under subdivision A 4 for license*  
469 *tax rate purposes.*

470 D. 1. Any person, firm, or corporation designated as the principal or prime contractor receiving  
471 identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of  
472 the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer  
473 software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical  
474 sciences shall be subject to a license tax rate not to exceed three cents per \$100 of such federal funds  
475 received in payment of such contracts upon documentation provided by such person, firm or corporation  
476 to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

477 2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by  
478 that locality in accordance with subdivision 1 of this subsection, and on which a license tax is due and  
479 paid, or which gross receipts defined by subdivision 1 of this subsection are properly reported to but  
480 exempted by a Virginia locality from taxation, shall not be subject to local license taxation by any other  
481 locality in the Commonwealth.

482 3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county  
483 manager plan of government, the following shall govern the taxation of the licensees described in  
484 subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors  
485 receiving identifiable federal appropriations for research and development services as defined in  
486 § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic  
487 systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v)  
488 electronic and physical sciences may be separately classified by any such county and subject to tax at a  
489 license tax rate not to exceed the limits set forth in subsections A through C above as to such federal



funds received in payment of such contracts upon documentation provided by such persons, firms, or corporations to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

E. In any case in which the Department of Mines, Minerals and Energy determines that the weekly U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District - Lower Atlantic Region) has increased by 20% or greater in any one-week period over the immediately preceding one-week period and does not fall below the increased rate for at least 28 consecutive days immediately following the week of such increase, then, notwithstanding any tax rate on retailers imposed by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in the following license year shall not exceed 110% of the gross receipts taxes on fuel sales made by such retailer in the license year of such increase. For license years beginning on or after January 1, 2006, every gas retailer shall maintain separate records for fuel sales and nonfuel sales and shall make such records available upon request by the local tax official.

The provisions of this subsection shall not apply to any person or entity (i) not conducting business as a gas retailer in the county, city, or town for the entire license year immediately preceding the license year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to § 58.1-3703 for the license year immediately preceding the license year of such increase.

The Department of Mines, Minerals and Energy shall determine annually if such increase has occurred and remained in effect for such 28-day period.

§ 58.1-3819. Transient occupancy tax.

A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. *Any county may also levy a transient occupancy tax for the occupancy of any dwelling used in the short-term real property rental business as defined in § 58.1-3700.1.* Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied; however, in York County, Albemarle County, Nelson County, Mecklenburg County, Gloucester County, Spotsylvania County, Stafford County, Loudoun County, Bedford County, Cumberland County, Floyd County, King George County, Wise County, Botetourt County, and Prince Edward County, such tax shall not exceed the rate of five percent. The revenues collected from that portion of the tax over two percent shall be designated and spent for promoting tourism, travel or business that generates tourism or travel in the locality. It is further provided that Rockbridge County, Caroline County, Dinwiddie County, Page County, Wythe County, James City County, Franklin County, Tazewell County, Augusta County, Prince William County, Craig County, Prince George County, Patrick County, Pulaski County, Halifax County, Montgomery County, Carroll County, Northampton County, and Amherst County may levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism, marketing of tourism or initiatives that, as determined in consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

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

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

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

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

F. *Any use of any real property as a facility for occupancy by transients for a fee or other charge, including any dwelling used in the short-term real property rental business as defined in § 58.1-3700.1, that is subject to the tax under this section shall not be considered a residential use for the purposes of any zoning ordinance or restrictive covenant.*

551 § 58.1-3840. Certain excise taxes permitted.

552 A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any  
553 city or town having general taxing powers established by charter pursuant to or consistent with the  
554 provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals  
555 *including any dwelling used in the short-term real property rental business as defined in § 58.1-3700.1*,  
556 meals, and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the  
557 amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii)  
558 that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the  
559 restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity  
560 or service charge does not exceed 20% of the sales price; or (iii) food and beverages sold through  
561 vending machines or on any tangible personal property purchased with food coupons issued by the  
562 United States Department of Agriculture under the Food Stamp Program or drafts issued through the  
563 Virginia Special Supplemental Food Program for Women, Infants, and Children. In addition, as set forth  
564 in § 51.5-98, no blind person operating a vending stand or other business enterprise under the  
565 jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and  
566 used by the United States for any military or naval purpose shall be required to collect and remit meals  
567 taxes.

568 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this  
569 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises  
570 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of  
571 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the  
572 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads  
573 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

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

578 D. (Expires January 1, 2008) Any city or town that is authorized to levy a tax on admissions may  
579 also levy a surcharge on admissions charged for attendance at any event at a major league baseball  
580 stadium, as defined in § 15.2-5800, located in the city or town if the stadium has a seating capacity of  
581 at least 40,000 seats. The surcharge shall not exceed two percent of the charge for admissions.