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HOUSE BILL NO. 1155

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 58.1-321, 58.1-461, 58.1-486.2, 58.1-3506, 58.1-3506.1, 58.1-3518, 58.1-3518.1, 58.1-3524, and 58.1-3912 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-320.1, 58.1-490.1, and 58.1-3524.1, relating to income tax surtax.

Patron—Brink

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-321, 58.1-461, 58.1-486.2, 58.1-3506, 58.1-3506.1, 58.1-3518, 58.1-3518.1, 58.1-3524, and 58.1-3912 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-320.1, 58.1-490.1, and 58.1-3524.1 as follows:

§ 58.1-320.1. Surtax for personal property tax replacement.

A. An additional income tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual. For taxable years beginning on and after January 1, 2010, the rate of tax shall be one-half of one percent, and for taxable years beginning on and after January 1, 2011, the rate of tax shall be one percent. Revenue from the additional tax shall be deposited into the Virginia Personal Property Tax Replacement Fund established by § 58.1-3524.1.

B. Notwithstanding any other provision of law, the credits allowed against the tax imposed by § 58.1-320 shall be allowed against the tax imposed by this section mutatis mutandis.

§ 58.1-321. Exemptions and exclusions.

A. No tax levied pursuant to §§ 58.1-320 and 58.1-320.1 is imposed, nor any return required to be filed by:

1. A single individual where the Virginia adjusted gross income for such taxable year is less than \$5,000 for taxable years beginning on and after January 1, 1987, but before January 1, 2004.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than \$5,000 for taxable years beginning on and after January 1, 2004, but before January 1, 2005.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than \$7,000 for taxable years beginning on and after January 1, 2005, but before January 1, 2008.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than \$11,250 for taxable years beginning on and after January 1, 2008, but before January 1, 2010.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than \$11,650 for taxable years beginning on and after January 1, 2010, but before January 1, 2012.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than \$11,950 for taxable years beginning on and after January 1, 2012.

2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year is less than \$8,000 for taxable years beginning on and after January 1, 1987, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2004.

An individual and spouse if their combined Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 is less than \$8,000 for taxable years beginning on and after January 1, 2004, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2005; less than \$14,000 for taxable years beginning on and after January 1, 2005, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2008; less than \$22,500 for taxable years beginning on and after January 1, 2008, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2010; less than \$23,300 for taxable years beginning on and after January 1, 2010, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2012; and less than \$23,900 for taxable years beginning on and after January 1, 2012, (or one-half of such amount in the case of a married individual filing a separate return).

For the purposes of this section "Virginia adjusted gross income" means federal adjusted gross income for the taxable years with the modifications specified in § 58.1-322 B, § 58.1-322 C and the

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59 additional deductions allowed under § 58.1-322 D 2 b and D 5 for taxable years beginning before
60 January 1, 2004. For taxable years beginning on and after January 1, 2004, Virginia adjusted gross
61 income means federal adjusted gross income with the modifications specified in subsections B and C of
62 § 58.1-322.

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

66 § 58.1-461. Requirement of withholding.

67 Every employer making payment of wages shall deduct and withhold with respect to the wages of
68 each employee for each payroll period an amount determined as follows: Such amount which, if an
69 equal amount was collected for each similar payroll period with respect to a similar amount of wages
70 for each payroll period during an entire calendar year, would aggregate or approximate the income tax
71 liability of such employee under this chapter after making allowance for the personal exemptions to
72 which such employee could be entitled on the basis of his status during such payroll period and after
73 making allowance for withholding purposes for a standard deduction from wages in accordance with the
74 laws of the United States relating to federal income taxes and after making an allowance for any credit
75 available to the employee as provided by § 58.1-332, and without making allowance for any other
76 deductions. In determining the amount to be deducted and withheld under this article, the wages may, at
77 the election of the employer, be computed to the nearest dollar. *An amount equal to the tax due under*
78 *§ 58.1-320.1 shall be withheld for each payroll period beginning on and after July 1, 2010.*

79 An employer shall not be required to deduct any amount upon a payment of wages to an employee if
80 there is in effect with respect to such payment a withholding exemption certificate, in such form and
81 containing such other information as the Tax Commissioner may prescribe, furnished by the employee to
82 the employer, certifying that the employee: (i) incurred no liability for income tax imposed by this
83 chapter for his preceding taxable year; and (ii) anticipates that he will incur no liability for income tax
84 imposed by this chapter for his current taxable year.

85 § 58.1-486.2. Withholding tax on Virginia source income of nonresident owners.

86 A. For the privilege of doing business in the Commonwealth, a pass-through entity that has taxable
87 income for the taxable year derived from or connected with Virginia sources, any portion of which is
88 allocable to a nonresident owner, shall pay a withholding tax under this section, except as provided in
89 subsection C.

90 B. 1. The amount of withholding tax payable by any pass-through entity under this article shall be
91 equal to five percent of the nonresident owner's share of income from Virginia sources of all nonresident
92 owners as determined under this chapter, which may lawfully be taxed by the Commonwealth and which
93 is allocable to a nonresident owner. *For shares of income distributed, or deemed to be distributed, in*
94 *calendar year 2010 the amount of the withholding tax shall be five and one-half percent of such share,*
95 *and for calendar year 2011 and after, such tax shall be six percent of such share.*

96 2. When determining the amount of withholding tax due under this section, the pass-through entity
97 may apply any tax credits allowable under the Code of Virginia to the pass-through entity that pass
98 through to nonresident owners; provided that in no event may the application of any credit or credits
99 reduce the tax liability of any nonresident owner under this article to less than zero.

100 C. Withholding shall not be required:

101 1. For any nonresident owner, other than a nonresident corporation, who is exempt from the tax
102 imposed by this article. An owner shall be exempt from the tax imposed by this article only if the
103 owner is, by reason of the owner's purpose or activities, exempt from paying federal income taxes on
104 the owner's Virginia source income. The pass-through entity may rely on the written statement of the
105 owner claiming to be exempt from the tax imposed by this article provided the pass-through entity
106 discloses the name and federal taxpayer identification number for all such owners in its return for the
107 taxable year filed under § 58.1-392;

108 2. For any nonresident owner that is a corporation that is exempt from the tax imposed by Article 10
109 (§ 58.1-400 et seq.). For purposes of this subdivision, a corporation is exempt from the tax imposed by
110 Article 10 only if the corporation, by reason of its purpose or activities, is exempt from paying federal
111 income taxes on the corporation's Virginia source income. The pass-through entity may rely on the
112 written statement of the person claiming to be exempt from the tax imposed by Article 10 provided the
113 pass-through entity discloses the name and federal taxpayer identification number for all such
114 corporations in its return for the taxable year filed under § 58.1-392; or

115 3. When compliance will cause undue hardship on the pass-through entity. However, no pass-through
116 entity shall be exempt under this subdivision from complying with the withholding requirements of this
117 section unless the Tax Commissioner, in his discretion, approves in writing the pass-through entity's
118 written petition for exemption from the withholding requirements of this section based on undue
119 hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify
120 standards for when a pass-through entity will not be required to comply with the withholding

requirements of this section due to undue hardship. The standards for undue hardship, determined by the Tax Commissioner in his discretion, shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to the Commonwealth of collecting the tax directly from a nonresident owner who does not voluntarily file a return and pay the amount of tax due under this chapter with respect to his allocable Virginia taxable income.

D. 1. Each pass-through entity required to withhold tax under this section shall pay the amount required to be withheld to the Tax Commissioner at the same time that the return under Article 9 (§ 58.1-390.1 et seq.), if required, is to be filed.

2. An extension of time for filing the return under § 58.1-393.1 shall not extend the time for paying the amount of withholding tax due under this section. In cases of an extension of time for filing, the pass-through entity shall pay, by the due date specified in subsection A of § 58.1-392, at least 90 percent of the withholding tax due for the taxable year or 100 percent of the tax paid under this section for the prior taxable year, if that taxable year was a taxable year of 12 months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return required under § 58.1-392. If the balance due is paid by the last day of the extension period for filing such return and the amount of tax due with that return is 10 percent or less of the tax due under this section for the taxable year, no penalty shall be imposed with respect to the balance so remitted. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

3. The Tax Commissioner may, if he believes it necessary for the protection of trust fund moneys due the Commonwealth, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section at any earlier time or times.

E. 1. Each nonresident owner shall be allowed a credit for that owner's share of the tax withheld by the pass-through entity under this section; provided, that when the distribution is to a corporation taxable under Article 10 (§ 58.1-400 et seq.), the credit allowed by this subsection shall be applied against the corporation's liability for tax under this chapter.

2. A nonresident owner's share of any withholding tax paid by the pass-through entity shall be treated as distributed to such nonresident owner on the earlier of (i) the day on which such tax was paid to the Tax Commissioner by the pass-through entity or (ii) the last day of the taxable year for which such tax was paid by the pass-through entity.

F. 1. Every pass-through entity required to deduct and withhold tax under this section shall furnish to each nonresident owner a written statement, as prescribed by the Tax Commissioner, showing (i) the amount of its allocable Virginia taxable income, whether or not distributed for federal income tax purposes by such pass-through entity to such nonresident owner; (ii) the amount deducted and withheld as tax under this section; and (iii) such other information as the Tax Commissioner may require.

2. A copy of the written statements required by this subsection shall be filed with the Virginia return filed under § 58.1-392 by the pass-through entity for its taxable year to which the distribution relates. The written statement shall be furnished to each nonresident owner on or before the due date of the pass-through entity's return under § 58.1-392 for the taxable year, including extensions of time for filing such return, or a later date as may be allowed by the Tax Commissioner.

G. Every pass-through entity required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years beginning on or after January 1, 2008. Any amount of tax withheld under this section shall be held in trust for the Tax Commissioner. No nonresident owner shall have a right of action against the pass-through entity in respect to any moneys withheld from such owner's distributive share and paid over to the Tax Commissioner in compliance with or in intended compliance with this section.

H. If any pass-through entity fails to deduct and withhold tax as required by this section, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld under this section shall not be collected from the pass-through entity, but the pass-through entity shall not be relieved from liability for any penalties or interest or additions to tax otherwise applicable in respect of such failure to withhold.

§ 58.1-490.1. Surtax for personal property tax replacement; estimated payment.

Effective on and after July 1, 2010, an additional amount of estimated tax shall be remitted equal to the tax imposed under § 58.1-320.1. For taxable years beginning on and after January 1, 2010, through December 31, 2010, such amount shall be remitted in two installments. The first installment shall be September 15, 2010, and the second installment shall be January 15, 2011.

For taxable years beginning on and after January 1, 2011, such amount shall be remitted pursuant to § 58.1-491.

§ 58.1-3506. Other classifications of tangible personal property for taxation.

A. The items of property set forth below are each declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property provided in this chapter:

1. a. Boats or watercraft weighing five tons or more, not used solely for business purposes;

b. Boats or watercraft weighing less than five tons, not used solely for business purposes;

2. Aircraft having a maximum passenger seating capacity of no more than 50 that are owned and operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

3. Aircraft having a registered empty gross weight equal to or greater than 20,000 pounds that are not owned or operated by scheduled air carriers recognized under federal law, but not including any aircraft described in subdivision 4;

4. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and otherwise used for educational purposes (including such flights as are necessary for testing, maintaining, or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such flights necessary for testing, maintaining, or preparing such aircraft for safe operation), shall constitute a new class of property. Such class of property shall not include any aircraft used for commercial purposes, including transportation and other services for a fee;

5. All other aircraft not included in subdivisions A 2, A 3, or A 4 and flight simulators;

6. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation purposes as provided in subsection C of § 46.2-730;

7. Tangible personal property used in a research and development business;

8. Heavy construction machinery not used for business purposes, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity equipment and ditch and other types of diggers;

9. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any other alternative energy source for use in manufacturing and any cogeneration equipment purchased to achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment shall include, without limitation, such equipment purchased by firms engaged in the business of generating electricity or steam, or both;

10. Vehicles without motive power, used or designed to be used as manufactured homes as defined in § 36-85.3;

11. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;

12. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes only;

13. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons, including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

14. Motor vehicles specially equipped to provide transportation for physically handicapped individuals;

15. Motor vehicles (i) owned by members of a volunteer rescue squad or volunteer fire department or (ii) leased by members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is owned by each volunteer rescue squad member or volunteer fire department member, or leased by each volunteer rescue squad member or volunteer fire department member if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer rescue squad member or volunteer fire department member regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer fire department member is identified. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline. In any county that prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the vehicle certified as of the immediately prior January date is transferred during the tax year;

16. Motor vehicles (i) owned by auxiliary members of a volunteer rescue squad or volunteer fire

department or (ii) leased by auxiliary members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by each auxiliary volunteer fire department or rescue squad member may be specially classified under this section. The auxiliary member shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or fire department who regularly performs duties for the rescue squad or fire department, and the motor vehicle is identified as regularly used for such purpose; however, if a volunteer rescue squad or fire department member and an auxiliary member are members of the same household, that household shall be allowed no more than two special classifications under this subdivision or subdivision 15 of this section. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

17. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound persons or provide transportation to senior or handicapped citizens in the community to carry out the purposes of the nonprofit organization;

18. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as defined in § 46.2-1900, which are used for recreational purposes only, and privately owned trailers as defined in § 46.2-100 which are designed and used for the transportation of horses except those trailers described in subdivision A 11 of § 58.1-3505;

19. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written statement to the commissioner of revenue or other assessing officer from the Department of Veterans Services that the veteran has been so designated or classified by the Department of Veterans Services as to meet the requirements of this section, and that his disability is service-connected. For purposes of this section, a person is blind if he meets the provisions of § 46.2-739;

20. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially classified under this section. In order to qualify for such classification, any auxiliary police officer who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary police officer or from the official who has appointed such auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

21. Until the first to occur of June 30, 2019, or the date that a special improvements tax is no longer levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District, provided that such business personal property is put into service within the District on or after July 1, 1999;

22. Motor vehicles which use clean special fuels as defined in § 46.2-749.3, which shall not include any vehicle described in subdivision 38 or 40;

23. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility that is properly licensed by the federal government, the Commonwealth, or both, and that is properly zoned for such use. "Wild animals" means any animals that are found in the wild, or in a wild state, within the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals that are found in the wild, or in a wild state, and are native to a foreign country;

24. Furniture, office, and maintenance equipment, exclusive of motor vehicles, that are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and that is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

305 25. Motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more
306 used to transport property for hire by a motor carrier engaged in interstate commerce;

307 26. All tangible personal property employed in a trade or business other than that described in
308 subdivisions A 1 through A 18, except for subdivision A 17, of § 58.1-3503;

309 27. Programmable computer equipment and peripherals employed in a trade or business;

310 28. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational
311 purposes only;

312 29. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for
313 recreational purposes only;

314 30. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes
315 only;

316 31. Tangible personal property used in the provision of Internet services. For purposes of this
317 subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables
318 users to access content, information, electronic mail, and the Internet as part of a package of services
319 sold to customers;

320 32. Motor vehicles (i) owned by persons who serve as auxiliary, reserve, or special deputy sheriffs or
321 (ii) leased by persons who serve as auxiliary, reserve, or special deputy sheriffs if the person is
322 obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. For
323 purposes of this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve, or special
324 deputy sheriff. One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to
325 auxiliary deputy sheriff duties may be specially classified under this section. In order to qualify for such
326 classification, any auxiliary deputy sheriff who applies for such classification shall identify the vehicle
327 for which this classification is sought, and shall furnish the commissioner of revenue or other assessing
328 officer with a certification from the governing body that has appointed such auxiliary deputy sheriff or
329 from the official who has appointed such auxiliary deputy sheriff. That certification shall state that the
330 applicant is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary
331 duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is
332 regularly used for that purpose. The certification shall be submitted by January 31 of each year to the
333 commissioner of revenue or other assessing officer; however, the commissioner of revenue or other
334 assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on
335 the part of the member, to accept a certification after the January 31 deadline;

336 33. Forest harvesting and silvicultural activity equipment;

337 34. Equipment used primarily for research, development, production, or provision of biotechnology
338 for the purpose of developing or providing products or processes for specific commercial or public
339 purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related
340 purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as
341 defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes
342 of this section, biotechnology equipment means equipment directly used in activities associated with the
343 science of living things;

344 35. Boats or watercraft weighing less than five tons, used for business purposes only;

345 36. Boats or watercraft weighing five tons or more, used for business purposes only;

346 37. Tangible personal property which is owned and operated by a service provider who is not a
347 CMRS provider and is not licensed by the FCC used to provide, for a fee, wireless broadband Internet
348 service. For purposes of this subdivision, "wireless broadband Internet service" means a service that
349 enables customers to access, through a wireless connection at an upload or download bit rate of more
350 than one megabyte per second, Internet service, as defined in § 58.1-602, as part of a package of
351 services sold to customers;

352 38. Low-speed vehicles as defined in § 46.2-100;

353 39. Motor vehicles with a seating capacity of not less than 30 persons, including the driver; and

354 40. Motor vehicles powered solely by electricity.

355 B. The governing body of any county, city or town may levy a tax on the property enumerated in
356 subsection A at different rates from the tax levied on other tangible personal property. The rates of tax
357 and the rates of assessment shall (i) for purposes of subdivisions 1, 2, 3, 4, 5, 6, 8, 11 through 20, 22
358 through 24, and 26 through 40 of subsection A, not exceed that applicable to the general class of
359 tangible personal property, (ii) for purposes of subdivisions A 7, A 9, A 21, and A 25, not exceed that
360 applicable to machinery and tools, and (iii) for purposes of subdivision A 10, equal that applicable to
361 real property.

362 C. Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is
363 defined in ~~§ 58.1-3523~~, (i) included in any separate class of property in subsection A and (ii) assessed
364 for tangible personal property taxes by a county, city, or town receiving a payment from the
365 Commonwealth under Chapter 35.1 of this title for providing tangible personal property tax relief, the
366 county, city, or town may levy the tangible personal property tax on such qualifying vehicle at a rate

not to exceed the rates of tax and rates of assessment required under such chapter, a separate class of property is declared that shall constitute a classification for local taxation separate from all other classifications of tangible personal property consisting of qualifying vehicles as defined in § 58.1-3523, even if such property meets the criteria to be included in any other class of property established under any other provision of law. The governing body of any county, city or town may levy a tax on this class of property at a different rate from the tax levied on other tangible personal property. Notwithstanding any other provision of this subsection, any county, city or town that imposes the tax on qualifying vehicles at a rate that exceeds \$0.000001 per \$100 of assessed value may specially classify any qualifying vehicle under the provisions of subsection A if such vehicle otherwise meets the criteria for such classification.

§ 58.1-3506.1. Other classification for taxation of certain tangible personal property owned by certain elderly and handicapped persons.

The governing body of any county, city or town may, by ordinance, levy a tax on one motor vehicle owned and used primarily by or for anyone at least 65 years of age or anyone found to be permanently and totally disabled, as defined in § 58.1-3506.3, at a different rate from the tax levied on other tangible personal property, upon such conditions as the ordinance may prescribe. Such rate shall not exceed the tangible personal property tax on the general class of tangible personal property. For purposes of this article, the term motor vehicle shall include only automobiles and pickup trucks. Any such motor vehicle owned by a husband and wife may qualify if either spouse is 65 or over or if either spouse is permanently and totally disabled. Notwithstanding any other provision of this section or article, for any automobile or pickup truck that is (i) a qualifying vehicle, as such term is defined in § 58.1-3523, and (ii) assessed for tangible personal property taxes by a county, city, or town receiving a payment from the Commonwealth under Chapter 35.1 of this title for providing tangible personal property tax relief, the rate of tax levied pursuant to this article shall not exceed the rates of tax and rates of assessment required under such chapter.

§ 58.1-3518. Taxpayers to file returns.

Every taxpayer owning any of the property subject to taxation under this chapter on January 1 of any year shall file a return thereof with the commissioner of the revenue for his county or city on the appropriate forms; however, the commissioner of the revenue may elect not to require such a return from any taxpayer who owns such property which does not have sufficient value to generate a tax assessment. *The commissioner of the revenue may also elect not to require such a return from the owner of qualifying vehicles pursuant to § 58.1-3524.1 that do not have sufficient tax levy to generate a tax bill.* Every person who leases any of such property from the owner thereof on such date shall file a return with the commissioner of the revenue of the county or city *as may be required*, wherein such property is located giving the name and address of the owner, except any person leasing a motor vehicle which is subject to the tax imposed under § 58.1-2402. Such returns shall be filed on or before May 1 of each year, except as otherwise provided by ordinance authorized by § 58.1-3916.

Every fiduciary shall file the returns mentioned in this chapter with the commissioner of revenue having jurisdiction. Every taxpayer owning machinery and tools or business personal property, if requested by the commissioner of the revenue, shall include on his annual return of such property information as to the total of original cost by year of purchase. The cost should be the original capitalized cost or the cost that would have been capitalized if the expense deduction in lieu of depreciation was elected under § 179 of the Internal Revenue Code.

§ 58.1-3518.1. Alternative method of filing returns for motor vehicles, trailers and boats.

A. Notwithstanding the provisions of § 58.1-3518, the governing body of any county, city or town may provide by ordinance for an alternative method of filing personal property tax returns for motor vehicles, trailers and boats. Any such ordinance adopted pursuant to this section may provide for the annual assessment and taxation of motor vehicles, trailers and boats based on a previous personal property tax return filed by the owner or owners of such property. For those whose name or address has not changed since a previous filing and whose personal property has had no change in status or situs, the assessment and taxation of property may be based on a personal property tax return previously filed with the jurisdiction adopting such an alternative method.

B. Any jurisdiction adopting such an alternative method may require the owner of a motor vehicle, trailer or boat to file a new personal property tax return whenever there is: (i) a change in the name or address of the person or persons owning taxable personal property; (ii) a change in the situs of personal property; (iii) any other change affecting the assessment or levy of the personal property tax on motor vehicles, trailers or boats for which a tax return has been filed previously; or (iv) any change in which a person acquires one or more motor vehicles, trailers or boats and for which no personal property tax return has been filed.

C. *Notwithstanding § 58.1-3518 and subsections A and B of § 58.1-3518.1, any such ordinance adopted pursuant to this section may provide for the annual assessment and taxation of motor vehicles*

428 *based on the registration records of the Virginia Department of Motor Vehicles. As may be determined*
429 *by local ordinance, such records may be relied up wholly or in part in lieu of receiving a specific*
430 *return from the taxpayer. Such records may be relied upon for local registration of qualifying vehicles*
431 *in accordance with § 58.1-3524.1, and for all other vehicles as may be specified by ordinance. Nothing*
432 *in this section shall preclude a commissioner of the revenue from requiring the affirmative filing of local*
433 *vehicle returns from owners as may be deemed necessary.*

434 *€ D. Nothing in this section shall preclude any jurisdiction from assessing taxable personal property*
435 *in accordance with § 58.1-3519 or assessing penalties and interest in accordance with § 58.1-3916.*

436 *§ 58.1-3524. Tangible personal property tax relief; local tax rates on vehicles qualifying for tangible*
437 *personal property tax relief.*

438 *A. For tax year 2006 and all tax years thereafter through 2009, counties, cities, and towns shall be*
439 *reimbursed by the Commonwealth for providing the required tangible personal property tax relief as set*
440 *forth herein.*

441 *B. For tax year 2006 and all tax years thereafter through 2009, the Commonwealth shall pay a total*
442 *of \$950 million for each such tax year in reimbursements to localities for providing the required tangible*
443 *personal property tax relief on qualifying vehicles in subsection C. No other amount shall be paid to*
444 *counties, cities, and towns for providing tangible personal property tax relief on qualifying vehicles.*
445 *Each county's, city's, or town's share of the \$950 million for each such tax year shall be determined pro*
446 *rata based upon the actual payments to such county, city, or town pursuant to this chapter for tax year*
447 *2005 as compared to the actual payments to all counties, cities, and towns pursuant to this chapter for*
448 *tax year 2005, as certified in writing by the Auditor of Public Accounts no later than March 1, 2006, to*
449 *the Governor and to the chairmen of the Senate Committee on Finance and the House Committee on*
450 *Appropriations. The amount reimbursed to a particular county, city, or town for tax year 2006 for*
451 *providing tangible personal property tax relief shall be the same amount reimbursed to such county, city,*
452 *or town for each subsequent tax year.*

453 *The reimbursement to each county, city, or town for tax year 2006 shall be paid by the*
454 *Commonwealth over the 12-month period beginning with the month of July 2006 and ending with the*
455 *month of June 2007, as provided in the general appropriation act. For all tax years subsequent to tax*
456 *year 2006 through tax year 2009, reimbursements shall be paid over the same 12-month period. All*
457 *reimbursement payments shall be made by check issued by the State Treasurer to the respective treasurer*
458 *of the county, city, or town on warrant of the Comptroller.*

459 *C. For tax year 2006 and all tax years thereafter through 2009, each county, city, or town that will*
460 *receive a reimbursement from the Commonwealth pursuant to subsection B shall provide tangible*
461 *personal property tax relief on qualifying vehicles by reducing its local tax rate on qualifying vehicles as*
462 *follows:*

463 *1. The local governing body of each county, city, or town shall fix or establish its tangible personal*
464 *property tax rate for its general class of tangible personal property, which rate shall also be applied to*
465 *that portion of the value of each qualifying vehicle that is in excess of \$20,000;*

466 *2. After fixing or establishing its tangible personal property tax rate for its general class of tangible*
467 *personal property, the local governing body of the county, city, or town shall fix or establish one or*
468 *more reduced tax rates (lower than the rate applied to the general class of tangible personal property)*
469 *that shall be applied solely to that portion of the value of each qualifying vehicle that is not in excess of*
470 *\$20,000. No other tangible personal property tax rate shall be applied to that portion of the value of*
471 *each qualifying vehicle that is not in excess of \$20,000. Such reduced tax rate or rates shall be set at an*
472 *effective tax rate or rates such that (i) the revenue to be received from such reduced tax rate or rates on*
473 *that portion of the value of qualifying vehicles not in excess of \$20,000 plus (ii) the revenue to be*
474 *received on that portion of the value of qualifying vehicles in excess of \$20,000 plus (iii) the*
475 *Commonwealth's reimbursement is approximately equal to the total revenue that would have been*
476 *received by the county, city, or town from its tangible personal property tax had the tax rate for its*
477 *general class of tangible personal property been applied to 100 percent of the value of all qualifying*
478 *vehicles.*

479 *D. ~~On~~ For tax years 2006 and all tax years thereafter through 2009, on or before the date the*
480 *certified personal property tax book is required by § 58.1-3118 to be provided to the treasurer, the*
481 *commissioner of the revenue shall identify each qualifying vehicle and its value to the treasurer of the*
482 *locality.*

483 *E. The provisions of this section are mandatory for any county, city, or town that will receive a*
484 *reimbursement pursuant to subsection B.*

485 *§ 58.1-3524.1. Virginia Personal Property Tax Replacement Fund.*

486 *A. There is hereby created in the state treasury a special nonreverting fund to be known as the*
487 *Virginia Personal Property Tax Replacement Fund, hereafter referred to as the "Fund." The Fund shall*
488 *be established on the books of the Comptroller and any moneys remaining in the Fund at the end of*
489 *each fiscal year shall not revert to the general fund but shall remain in the Fund. Interest earned on*

moneys deposited in the Fund shall be credited to the Fund. For purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813, however, all deposits to and disbursements from the Fund shall be accounted for as part of the general fund of the state treasury.

B. For tax year 2010, after reserving 10 percent of the monthly deposits in the Fund to satisfy future refund claims, the remaining moneys in the Fund shall be allocated by the Department of Taxation and distributed to counties, cities, and towns in the same amount and on the same date, or earlier if the Secretary of Finance determines that sufficient revenues are available in the Fund to do so, as the personal property tax relief provided for tax year 2009 under § 58.1-3524 and Item 471 of Chapter 781 of the Acts of Assembly of 2009. In the event that there are insufficient moneys in the Fund to make any such distribution on a timely basis, the Comptroller shall transfer sufficient moneys to the Fund to make such transfer if the Secretary of Finance determines that sufficient revenues will be available for the Fund to reimburse such transfers on or before June 30, 2011. The Comptroller shall recover such moneys from the Fund when they are no longer necessary for timely distribution under this subsection.

C. For Tax Year 2010, an additional distribution or distributions to each county, city, and town eligible for a distribution under subsection D shall be made from the Fund prior to July 1, 2011, in such amount as determined by the Secretary of Finance that will not impair the ability of the Fund to satisfy all other required distributions from the Fund within the fiscal year and will leave sufficient amounts in the Fund for the timely satisfaction of future refund claims. This distribution shall represent additional tax relief to such localities. Each eligible county's, city's, or town's share of the distribution from the Fund shall be determined by a fraction, the numerator of which is the payments due to such county, city, or town pursuant to § 58.1-3524 for tax year 2009 and the denominator of which is the payments due under § 58.1-3524 for tax year 2009 to all counties, cities, and towns that are eligible for a distribution under subsection D.

D. For tax year 2011 and all tax years thereafter, in lieu of imposing a tangible personal property tax on qualifying vehicles at a rate that exceeds \$0.000001 per \$100 of assessed value, any county, city, or town shall be entitled to a distribution of the revenue in accordance with subsection A of § 58.1-320.1 from the Fund established in subsection A, provided the locality enacts and provides to the Tax Commissioner no later than November 1, 2010, and subsequently maintains in effect thereafter, an ordinance that (i) imposes the tangible personal property tax on qualifying vehicles at a rate not exceeding \$0.000001 per \$100 of assessed value and (ii) has an effective date for tax years beginning on or after January 1, 2011. Any county, city, or town that fails to meet the requirements of this subsection shall not be entitled to a distribution from the Fund. For any tax year beginning on or after January 1, 2011, any locality that has qualified to receive a distribution under this subsection regarding any tax year may not impose a tangible personal property tax on qualifying vehicles at a rate exceeding \$0.000001 per \$100 of assessed value until the subsequent tax year.

E. For tax year 2011 and all tax years thereafter, after reserving 10 percent of the monthly deposits in the Fund to satisfy future refund claims, the remaining moneys in the Fund shall be allocated by the Department of Taxation and distributed to each county, city, or town eligible to receive a distribution from the Fund under subsection D. Each eligible county's, city's, or town's share of the distribution from the Fund shall be determined by a fraction, the numerator of which is the payments due to such county, city, or town pursuant to § 58.1-3524 for tax year 2009, and the denominator of which is the payments due under § 58.1-3524 for tax year 2009 to all counties, cities, and towns eligible for a distribution under subsection D. The distribution shall be made as soon as practicable after the close of each month during which the net revenue is received into the Fund.

F. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next month or for subsequent months.

G. On or before the date the certified personal property tax book is required by § 58.1-3118 to be provided to the treasurer, the commissioner of the revenue shall identify each qualifying vehicle and its value to the treasurer of the locality.

§ 58.1-3912. Treasurers to mail certain bills to taxpayers; penalties; electronic transmission.

A. The treasurer of every city and county shall, as soon as reasonably possible in each year, but not later than 14 days prior to the due date of the taxes, send or cause to be sent by United States mail to each taxpayer assessed with taxes and levies for that year a bill or bills setting forth the amounts due. The treasurer may elect not to send a bill amounting to \$20 or less as shown by an assessment book in such treasurer's office. The treasurer may employ the services of a mailing service or other vendor for fulfilling the requirements of this section. The failure of any such treasurer to comply with this section shall be a Class 4 misdemeanor. Such treasurer shall be deemed in compliance with this section as to any taxes due on real estate if, upon certification by the obligee of any note or other evidence of debt secured by a mortgage or deed of trust on such real estate that an agreement has been made with the obligor in writing within the mortgage or deed of trust instrument that such arrangements be made, he mails the bill for such taxes to the obligee thereof. Upon nonpayment of taxes by either the obligee or

551 obligor, a past-due tax bill will be sent to the taxpayer. No governing body shall publish the name of a
552 taxpayer in connection with a tax debt for which a bill was not sent, without first sending a notice of
553 deficiency to his last known address at least two weeks before such publication.

554 B. The governing body of any county, city or town may attach to or mail with all real estate and
555 tangible personal property tax bills, prepared for taxpayers in such locality, information indicating how
556 the tax rate charged upon such property and revenue derived therefrom is apportioned among the various
557 services and governmental functions provided by the locality.

558 C. Notwithstanding the provisions of subsection A of this section, in any county which has adopted
559 the urban county executive form of government, and in any county contiguous thereto which has
560 adopted the county executive form of government, tangible personal property tax bills shall be mailed
561 not later than 30 days prior to the due date of such taxes.

562 D. Notwithstanding the provisions of subsection A of this section, any county and town, the
563 governing bodies of which mutually agree, shall be allowed to send, to each taxpayer assessed with
564 taxes, by United States mail no later than 14 days prior to the due date of the taxes, a single real
565 property tax bill and a single tangible personal property tax bill.

566 E. Beginning with tax year ~~2006~~ 2010, in addition to all other information currently appearing on
567 tangible personal property tax bills, each such bill required to be sent pursuant to subsection A shall
568 state on its face (i) whether the vehicle is a qualifying vehicle as defined in § 58.1-3523; (ii) a ~~statement~~
569 ~~indicating the reduced tangible personal property tax rates applied to qualifying vehicles resulting from~~
570 ~~the Commonwealth's reimbursements for tangible personal property tax relief pursuant to § 58.1-3524,~~
571 ~~and the locality's tangible personal property tax rate for its general class of tangible personal property,~~
572 ~~provided that such statement shall not be required for tax bills in any county, city, or town that will not~~
573 ~~receive any reimbursement pursuant to subsection B of § 58.1-3524; (iii) the vehicle's registration~~
574 ~~number pursuant to § 46.2-604; (iv) (iii) the amount of tangible personal property tax levied on the~~
575 ~~vehicle; and (v) (iv) if the locality prorates personal property tax pursuant to § 58.1-3516, the number of~~
576 ~~months for which a bill is being sent.~~

577 F. Notwithstanding the provisions of subsection A, the treasurer, consistent with guidelines
578 promulgated by the Department of Taxation implementing the provisions of subdivision 2 of
579 § 58.1-1820, may convey, with the written consent of the taxpayer, any tax bill by electronic means
580 chosen by the taxpayer, including without limitation facsimile transmission or electronic mail (e-mail), in
581 lieu of posting such bill by first-class mail. The treasurer conveying a bill by means authorized in this
582 subsection shall maintain a copy (in written form or electronic media) of the bill reflecting the date of
583 transmission until such time as the bill has been satisfied or otherwise removed from the treasurer's
584 books by operation of law. Transmission of a bill pursuant to this subsection shall have the same force
585 and effect for all purposes arising under this subtitle as mailing to the taxpayer by first-class mail on the
586 date of transmission.

587 G. Any solid waste disposal fee imposed by a county may be attached to, mailed with, or stated on
588 the appropriate real estate tax bill.