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SENATE BILL NO. 705

Offered January 22, 2010

A BILL to amend and reenact §§ 58.1-320, 58.1-322, 58.1-422, 58.1-512, 58.1-602, 58.1-612, 58.1-901, 58.1-902, and 58.1-905 of the Code of Virginia and to amend the Code of Virginia by adding in Article 10 of Chapter 3 of Title 58.1 a section numbered 58.1-422.01, by adding in Chapter 3 of Title 58.1 an article numbered 10.1, consisting of sections numbered 58.1-422.1 through 58.1-422.6, and by adding sections numbered 58.1-604.7, 58.1-604.8, and 58.1-901.1, relating to the Commonwealth's system of taxation; changes thereto.

Patron—Locke

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-320, 58.1-322, 58.1-422, 58.1-512, 58.1-602, 58.1-612, 58.1-901, 58.1-902, and 58.1-905 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 10 of Chapter 3 of Title 58.1 a section numbered 58.1-422.01, by adding in Chapter 3 of Title 58.1 an article numbered 10.1, consisting of sections numbered 58.1-422.1 through 58.1-422.6, and by adding sections numbered 58.1-604.7, 58.1-604.8, and 58.1-901.1 as follows:

§ 58.1-320. Imposition of tax.

A. A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual as follows:

Two percent on income not exceeding \$3,000;

Three percent on income in excess of \$3,000, but not in excess of \$5,000;

Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

Five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning January 1, 1990;

Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989; and

Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990.

B. In addition to the tax imposed under subsection A, for the 2011, 2012, and 2013 taxable years a tax is hereby imposed at the rate of three percent tax on the Virginia (i) taxable income that is in excess of \$250,000 for each single person, and (ii) combined taxable income that is in excess of \$500,000 for each married couple.

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal

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59 taxable income, on obligations or securities of any authority, commission or instrumentality of the
60 United States, which the laws of the United States exempt from federal income tax but not from state
61 income taxes;

62 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

63 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum
64 distribution allowance and any amount excludable for federal income tax purposes that is excluded from
65 federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions
66 under § 402 of the Internal Revenue Code; and

67 5 through 8. [Repealed.]

68 9. The amount required to be included in income for the purpose of computing the partial tax on an
69 accumulation distribution pursuant to § 667 of the Internal Revenue Code.

70 C. To the extent included in federal adjusted gross income, there shall be subtracted:

71 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
72 and on obligations or securities of any authority, commission or instrumentality of the United States to
73 the extent exempt from state income taxes under the laws of the United States including, but not limited
74 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
75 interest on equipment purchase contracts, or interest on other normal business transactions.

76 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
77 or of any political subdivision or instrumentality of the Commonwealth.

78 3. [Repealed.]

79 4. Benefits received under Title II of the Social Security Act and other benefits subject to federal
80 income taxation solely pursuant to § 86 of the Internal Revenue Code.

81 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
82 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on
83 the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of
84 the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of
85 subsection D of this section may not also claim a subtraction under this subdivision.

86 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as
87 defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction
88 under subdivision 5 of subsection D of this section may not also claim a subtraction under this
89 subdivision.

90 5. The amount of any refund or credit for overpayment of income taxes imposed by the
91 Commonwealth or any other taxing jurisdiction.

92 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
93 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

94 7, 8. [Repealed.]

95 9. [Expired.]

96 10. Any amount included therein less than \$600 from a prize awarded by the State Lottery
97 Department.

98 11. The wages or salaries received by any person for active and inactive service in the National
99 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar
100 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of
101 O3 and below shall be entitled to the deductions specified herein.

102 12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for
103 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
104 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
105 perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee
106 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which
107 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

108 13. [Repealed.]

109 14. [Expired.]

110 15, 16. [Repealed.]

111 17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research
112 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
113 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be
114 available to partners, shareholders of S corporations, and members of limited liability companies to the
115 extent and in the same manner as other deductions may pass through to such partners, shareholders, and
116 members.

117 18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not
118 otherwise subtracted under this subsection, earned for any month during any part of which such member
119 performed military service in any part of the former Yugoslavia, including the air space above such
120 location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR

as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer completes such service.

19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

24. Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is \$15,000 or less.

25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

28. For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of such victim.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include

any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

29. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a) (2), then the entire gain recognized may be subtracted.

b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a) (3), then 20 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in each of the four succeeding taxable years.

30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1, 2005, the indemnification payments received by contract poultry growers and table egg producers from the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of poultry who contract with poultry growers qualify for this subtraction.

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments from an annuity contract that are received by a beneficiary of such contract and are subject to federal income taxation.

33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. Three thousand dollars for single individuals for taxable years beginning on and after January 1, 1989; \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 1989, but before January 1, 2005; and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$800 for taxable years beginning on and after January 1, 1988, but before January 1, 2005; \$900 for taxable years beginning on and after January 1, 2005, but before January 1, 2008; and \$930 for taxable years beginning on and after January 1, 2008, for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of \$800.

The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is

based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. Effective for all taxable years beginning on or after January 1, 1996, but before January 1, 2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age 62 through 64.

b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

c. For taxable years beginning January 1, 2004, but before January 1, 2005, a deduction in the amount of \$6,000 for individuals born on or between January 2, 1940, and January 1, 1942.

d. For taxable years beginning January 1, 2005, but before January 1, 2006, a deduction in the amount of \$6,000 for individuals born on or between January 2, 1941, and January 1, 1942.

e. For taxable years beginning on and after January 1, 2004, but before January 1, 2011, a deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

For taxable years beginning on and after January 1, 2011, a deduction in the amount of \$12,000 for individuals who have attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

f. For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a savings trust account, less any amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take

the deduction for the full amount paid during such years, less any amounts previously deducted with respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.

8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.

9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. For taxable years beginning on and after January 1, 2000, the amount an individual pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes, or a credit under § 58.1-339.11.

11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

a. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

b. If the payment is received in a single payment, then 10% of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

12. For taxable years beginning on and after January 1, 2007, an amount equal to 20% of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title, not to exceed \$500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35%, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

13. For taxable years beginning on or after January 1, 2007, the lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the income or gain of such electing small business corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or deductions of such electing small business corporation (S corporation).

Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from

federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value of any distribution paid or distributed to the shareholder by such electing small business corporation (S corporation).

H. Notwithstanding any other provision of law, the income from any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-422. Manufacturing companies; apportionment.

A. For taxable years beginning on or after July 1, ~~2011~~ 2012, the Virginia taxable income of a manufacturing company, excluding income allocable under § 58.1-407, may be apportioned within and without the Commonwealth as provided in § 58.1-408 or as follows:

1. From July 1, ~~2011~~ 2012, until July 1, ~~2013~~ 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, ~~2013~~ 2014, until July 1, ~~2014~~ 2015, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, ~~2014~~ 2015, and thereafter, by multiplying such income by the sales factor.

B. If the taxpayer makes one or more of the elections described in subdivision A 1, A 2, or A 3, the taxpayer may not revoke the election for a period of three taxable years.

In addition, the taxpayer shall certify to the Department that the average weekly wage of its full-time employees is greater than the lower of the state or local average weekly wages for the taxpayer's industry.

C. If the average annual number of full-time employees of a manufacturing company for the first three taxable years (in which the manufacturing company used the alternative apportionment set forth in this section) is less than the base year employment, then the Department of Taxation shall assess the manufacturing company with additional taxes pursuant to this article computed as the difference between (i) the taxes that would have been due under the apportionment formula provided under § 58.1-408 for such three taxable years, minus (ii) the taxes due under the alternative apportionment provided under this section for such three taxable years. In addition to such additional taxes, the Department shall assess the manufacturing company a penalty of 10 percent of the amount of such additional taxes. Interest shall accrue and shall be assessed on such additional taxes at the rate prescribed under § 58.1-15, with such interest accruing from the original due date for filing of the income tax return to the date of payment of such additional taxes.

Such additional taxes, penalty, and interest are hereby imposed on manufacturing companies using the alternative apportionment set forth in this section.

D. As used in this section, unless the context clearly shows otherwise, the term or phrase:

"Base year employment" means the average number of full-time employees employed by the manufacturing company in the Commonwealth in the taxable year that ended immediately prior to the first taxable year in which the manufacturing company used the alternative apportionment set forth in this section.

"Full-time employee" means an employee of a manufacturing company who is employed for an indefinite duration in the Commonwealth for which the standard fringe benefits are paid by the manufacturing company, for which employment requires a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such manufacturing company's operations, which

428 "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year.

429 "Manufacturing company" means a domestic or foreign corporation primarily engaged in activities
430 that, in accordance with the North American Industrial Classification System (NAICS), United States
431 Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector
432 11, 31, 32, or 33.

433 E. The General Assembly of Virginia finds that job creation is essential to the continued fiscal health
434 of the Commonwealth. In this modern economy, states often compete for quality manufacturing jobs.
435 Accordingly, the provisions of this section relating to manufacturing companies that increase their
436 employment in Virginia are integral to the purpose of the election allowed pursuant to this section. If
437 any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a
438 court of competent jurisdiction, that provision shall not be deemed severable.

439 § 58.1-422.01. *Allocation of income to the Commonwealth; non-domiciliary state prohibited from*
440 *taxing.*

441 *Notwithstanding any other provision of law, for taxable years on or after January 1, 2011, the*
442 *portion of the taxable income of a corporation that a non-domiciliary state is prohibited from taxing*
443 *under the Constitution of the United States shall be allocated in full to the Commonwealth if the*
444 *commercial domicile of the corporation is in the Commonwealth.*

445 *Article 10.1.*

446 *Combined Reporting Requirements.*

447 § 58.1-422.1. *Combined reporting requirements.*

448 *For taxable years beginning on or after January 1, 2011, applicable persons shall be subject to*
449 *combined reporting requirements as set forth in this Article and implemented by the Department of*
450 *Taxation.*

451 § 58.1-422.2. *Definitions.*

452 *For the purpose of this chapter:*

453 A. "Combined group" means the group of all persons whose income and apportionment factors are
454 required to be taken into account pursuant to subsection A or subsection B of § 58.1-422.3 of the Code
455 of Virginia in determining the taxpayer's share of the net business income or loss apportionable to this
456 Commonwealth.

457 B. "Corporation" means any corporation as defined by the laws of this Commonwealth or
458 organization of any kind treated as a corporation for tax purposes under the laws of this
459 Commonwealth, wherever located, which if it were doing business in this Commonwealth would be a
460 "taxpayer." The business conducted by a partnership which is directly or indirectly held by a
461 corporation shall be considered the business of the corporation to the extent of the corporation's
462 distributive share of the partnership income, inclusive of guaranteed payments to the extent prescribed
463 by regulation.

464 C. "Internal Revenue Code" means Title 26 of the United States Code of 1986, as amended without
465 regard to application of federal treaties unless expressly made applicable to states of the United States.

466 D. "Partnership" means a general or limited partnership, or organization of any kind treated as a
467 partnership for tax purposes under the laws of this Commonwealth.

468 E. "Person" means any individual, firm, partnership, general partner of a partnership, limited
469 liability company, registered limited liability partnership, foreign limited liability partnership,
470 association, corporation, company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy,
471 receiver, executor, administrator, assignee or organization of any kind.

472 F. "Taxpayer" means every person, corporation, partnership, organization, trust or estate subject to
473 taxation under the laws of this Commonwealth, or under the ordinances, resolutions or orders of any
474 county, city, town or other political subdivision of this Commonwealth.

475 G. "Tax haven" means a jurisdiction that, during the tax year in question:

476 1. Is identified by the Organization for Economic Co-operation and Development (OECD) as a tax
477 haven or as having a harmful preferential tax regime, or,

478 2. Exhibits the following characteristics established by the OECD in its 1998 report entitled *Harmful*
479 *Tax Competition: An Emerging Global Issue* as indicative of a tax haven or as a jurisdiction having a
480 harmful preferential tax regime, regardless of whether it is listed by the OECD as an un-cooperative tax
481 haven:

482 a. Has no or nominal effective tax on the relevant income; and

483 b. (1) Has laws or practices that prevent effective exchange of information for tax purposes with
484 other governments on taxpayers benefiting from the tax regime;

485 (2) Has tax regime which lacks transparency. A tax regime lacks transparency if the details of
486 legislative, legal or administrative provisions are not open and apparent or are not consistently applied
487 among similarly situated taxpayers, or if the information needed by tax authorities to determine a
488 taxpayer's correct tax liability, such as accounting records and underlying documentation, is not
489 adequately available;

(3) Facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;

(4) Explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or

(5) Has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

H. "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. Any business conducted by a partnership shall be treated as conducted by its partners, whether directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the percentage of the partner's ownership interest or its distributive or any other share of partnership income. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a partnership if there is a synergy, and exchange and flow of value between the two parts of the business and the two corporations are members of the same commonly controlled group.

§ 58.1-422.3. Combined reporting required, when; discretionary under certain circumstances.

A. A taxpayer engaged in a unitary business with one or more other corporations shall file a combined report which includes the income, determined under subsection C of § 58.1-422.4 of the Code of Virginia, and apportionment factors, determined under Article 10 (§ 58.1-400 et seq.) of this Chapter of Title 58.1 and subdivision B of § 58.1-422.4, of all corporations that are members of the unitary business, and such other information as required by the Director.

B. The Director may, by regulation, require the combined report include the income and associated apportionment factors of any persons that are not included pursuant to subsection A, but that are members of a unitary business, in order to reflect proper apportionment of income of entire unitary businesses. Authority to require combination by regulation under this subsection includes authority to require combination of persons that are not, or would not be if doing business in this Commonwealth, subject to the laws of the Commonwealth.

In addition, if the Director determines that the reported income or loss of a taxpayer engaged in a unitary business with any person not included pursuant to subsection A represents an avoidance or evasion of tax by such taxpayer, the Director may, on a case by case basis, require all or any part of the income and associated apportionment factors of such person be included in the taxpayer's combined report.

With respect to inclusion of associated apportionment factors pursuant to this subsection, the Director may require the exclusion of any one or more of the factors, the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this Commonwealth, or the employment of any other method to effectuate a proper reflection of the total amount of income subject to apportionment and an equitable allocation and apportionment of the taxpayer's income.

§ 58.1-422.4. Determination of taxable income or loss using combined report.

The use of a combined report does not disregard the separate identities of the taxpayer members of the combined group. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this Commonwealth, which shall include, in addition to other types of income, the taxpayer member's apportioned share of business income of the combined group, where business income of the combined group is calculated as a summation of the individual net business incomes of all members of the combined group. A member's net business income is determined by removing all but business income, expense and loss from that member's total income, as provided in detail below.

A. Components of income subject to tax in this Commonwealth; application of tax credits and post apportionment deductions.

1. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this Commonwealth, which shall include:

a. Its share of any business income apportionable to this Commonwealth of each of the combined groups of which it is a member, determined under subsection B,

b. Its share of any business income apportionable to this Commonwealth of a distinct business activity conducted within and without the Commonwealth wholly by the taxpayer member, determined under Article 10 (§ 58.1-400 et seq.) of this Chapter of Title 58.1,

c. Its income from a business conducted wholly by the taxpayer member entirely within the

551 *Commonwealth,*

552 *d. Its income sourced to this Commonwealth from the sale or exchange of capital or assets, and from*
553 *involuntary conversions, as determined under subdivision C 2 g,*

554 *e. Its nonbusiness income or loss allocable to this Commonwealth, determined under Article 10*
555 *(§ 58.1-400 et seq.) of this Chapter of Title 58.1,*

556 *f. Its income or loss allocated or apportioned in an earlier year, required to be taken into account*
557 *as Commonwealth source income during the income year, other than a net operating loss, and,*

558 *g. Its net operating loss carryover or carryback. If the taxable income computed pursuant to*
559 *§ 58.1-422.4 of the Code of Virginia results in a loss for a taxpayer member of the combined group,*
560 *that taxpayer member has a Virginia net operating loss (NOL), subject to the net operating loss*
561 *limitations, carryforward and carryback provisions. Such NOL is applied as a deduction in a prior or*
562 *subsequent year only if that taxpayer has Virginia source positive net income, whether or not the*
563 *taxpayer is or was a member of a combined reporting group in the prior or subsequent year.*

564 *2. Except where otherwise provided, no tax credit or post-apportionment deduction earned by one*
565 *member of the group, but not fully used by or allowed to that member, may be used in whole or in part*
566 *by another member of the group or applied in whole or in part against the total income of the*
567 *combined group; and a post-apportionment deduction carried over into a subsequent year as to the*
568 *member that incurred it, and available as a deduction to that member in a subsequent year, will be*
569 *considered in the computation of the income of that member in the subsequent year, regardless of the*
570 *composition of that income as apportioned, allocated or wholly within this Commonwealth.*

571 *B. Determination of taxpayer's share of the business income of a combined group apportionable to*
572 *this Commonwealth.*

573 *The taxpayer's share of the business income apportionable to this Commonwealth of each combined*
574 *group of which it is a member shall be the product of (i) the business income of the combined group,*
575 *determined under subsection C, and (ii) the taxpayer member's apportionment percentage, determined*
576 *under Article 10 (§ 58.1-400 et seq.) of this Chapter of Title 58.1, including in the property, payroll and*
577 *sales factor numerators the taxpayer's property, payroll and sales, respectively, associated with the*
578 *combined group's unitary business in this Commonwealth, and including in the denominator the*
579 *property, payroll and sales of all members of the combined group, including the taxpayer, which*
580 *property, payroll and sales are associated with the combined group's unitary business wherever located.*
581 *The property, payroll, and sales of a partnership shall be included in the determination of the partner's*
582 *apportionment percentage in proportion to a ratio the numerator of which is the amount of the partner's*
583 *distributive share of partnership's unitary income included in the income of the combined group in*
584 *accordance with subdivision C 2 c of § 58.1-422.4 of the Code of Virginia and the denominator of*
585 *which is the amount of the partnership's total unitary income.*

586 *C. Determination of the business income of the combined group.*

587 *The business income of a combined group is determined as follows:*

588 *1. From the total income of the combined group, determined under subdivision C 2 of § 58.1-422.4*
589 *of the Code of Virginia, subtract any income, and add any expense or loss, other than the business*
590 *income, expense or loss of the combined group.*

591 *2. Except as otherwise provided, the total income of the combined group is the sum of the income of*
592 *each member of the combined group determined under federal income tax laws, as adjusted for state*
593 *purposes, as if the member were not consolidated for federal purposes. The income of each member of*
594 *the combined group shall be determined as follows:*

595 *a. For any member incorporated in the United States, or included in a consolidated federal*
596 *corporate income tax return, the income to be included in the total income of the combined group shall*
597 *be the taxable income for the corporation after making appropriate adjustments under Chapter 3 of*
598 *Article 10 (§ 58.1-400 et seq.).*

599 *b. (1) For any member not included in subdivision C 2 a of § 58.1-422.4 of the Code of Virginia, the*
600 *income to be included in the total income of the combined group shall be determined as follows:*

601 *(a) A profit and loss statement shall be prepared for each foreign branch or corporation in the*
602 *currency in which the books of account of the branch or corporation are regularly maintained.*

603 *(b) Adjustments shall be made to the profit and loss statement to conform it to the accounting*
604 *principles generally accepted in the United States for the preparation of such statements except as*
605 *modified by this regulation.*

606 *(c) Adjustments shall be made to the profit and loss statement to conform it to the tax accounting*
607 *standards required by Title 58.1 of the Code of Virginia.*

608 *(d) Except as otherwise provided by regulation, the profit and loss statement of each member of the*
609 *combined group, and the apportionment factors related thereto, whether United States or foreign, shall*
610 *be translated into the currency in which the parent company maintains its books and records.*

611 *(e) Income apportioned to this state shall be expressed in United States dollars.*

612 *(2) In lieu of the procedures set forth in subdivision C 2 b 1 and subject to the determination of the*

Director that it reasonably approximates income as determined under Title 58.1 of the Code of Virginia, any member not included in subsection C 2 a may determine its income on the basis of the consolidated profit and loss statement which includes the member and which is prepared for filing with the Securities and Exchange Commission by related corporations. If the member is not required to file with the Securities and Exchange Commission, the Director may allow the use of the consolidated profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor. If above statements do not reasonably approximate income as determined under Title 58.1 of the Code of Virginia the Director may accept those statements with appropriate adjustments to approximate that income.

c. If a unitary business includes income from a partnership, the income to be included in the total income of the combined group shall be the member of the combined group's direct and indirect distributive share of the partnership's unitary business income.

d. All dividends paid by one to another of the members of the combined group shall, to the extent those dividends are paid out of the earnings and profits of the unitary business included in the combined report, in the current or an earlier year, be eliminated from the income of the recipient. This provision shall not apply to dividends received from members of the unitary business which are not a part of the combined group.

e. Except as otherwise provided by regulation, business income from an intercompany transaction between members of the same combined group shall be deferred in a manner similar to 26 CFR 1.1502-13. Upon the occurrence of any of the following events, deferred business income resulting from an intercompany transaction between members of a combined group shall be restored to the income of the seller, and shall be apportioned as business income earned immediately before the event:

(1) The object of a deferred intercompany transaction is (i) re-sold by the buyer to an entity that is not a member of the combined group, (ii) re-sold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged, or (iii) converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged, or,

(2) The buyer and seller are no longer members of the same combined group, regardless of whether the members remain unitary.

f. A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to Internal Revenue Code Section 170, be subtracted first from the business income of the combined group (subject to the income limitations of that section applied to the entire business income of the group), and any remaining amount shall then be treated as a nonbusiness expense allocable to the member that incurred the expense (subject to the income limitations of that section applied to the nonbusiness income of that specific member). Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member, and the rules of this section shall apply in the subsequent year in determining the allowable deduction in that year.

g. Gain or loss from the sale or exchange of capital assets, property described by Internal Revenue Code Section 1231(a)(3), and property subject to an involuntary conversion, shall be removed from the total separate net income of each member of a combined group and shall be apportioned and allocated as follows.

(1) For each class of gain or loss (short term capital, long term capital, Internal Revenue Code Section 1231, and involuntary conversions) all members' business gain and loss for the class shall be combined (without netting between such classes), and each class of net business gain or loss separately apportioned to each member using the member's apportionment percentage determined under subsection B of § 58.1-422.4.

(2) Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member's nonbusiness gain and loss for all classes allocated to this Commonwealth, using the rules of Internal Revenue Code Sections 1231 and 1222, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, Section 1231 property, and involuntary conversions which are nonbusiness items allocated to another state.

(3) Any resulting state source income (or loss, if the loss is not subject to the limitations of Internal Revenue Code Section 1211) of a taxpayer member produced by the application of the preceding subsections shall then be applied to all other state source income or loss of that member.

(4) Any resulting state source loss of a member that is subject to the limitations of Section 1211 of the Internal Revenue Code shall be carried forward by that member, and shall be treated as state source short-term capital loss incurred by that member for the year for which the carryover applies.

h. Any expense of one member of the unitary group which is directly or indirectly attributable to the nonbusiness or exempt income of another member of the unitary group shall be allocated to that other

674 member as corresponding nonbusiness or exempt expense, as appropriate.

675 § 58.1-422.5. Designation of surety.

676 As a filing convenience, and without changing the respective liability of the group members,
677 members of a combined reporting group may annually elect to designate one taxpayer member of the
678 combined group to file a single return in the form and manner prescribed by the department, in lieu of
679 filing their own respective returns, provided that the taxpayer designated to file the single return
680 consents to act as surety with respect to the tax liability of all other taxpayers properly included in the
681 combined report, and agrees to act as agent on behalf of those taxpayers for the year of the election for
682 tax matters relating to the combined report for that year. If for any reason the surety is unwilling or
683 unable to perform its responsibilities, tax liability may be assessed against the taxpayer members.

684 § 58.1-422.6. Water's-edge election; initiation and withdrawal.

685 A. Water's-edge election.

686 Taxpayer members of a unitary group that meet the requirements of subsection B of § 58.1-422.6
687 may elect to determine each of their apportioned shares of the net business income or loss of the
688 combined group pursuant to a water's-edge election. Under such election, taxpayer members shall take
689 into account all or a portion of the income and apportionment factors of only the following members
690 otherwise included in the combined group pursuant to § 58.1-422.3, as described below:

691 1. The entire income and apportionment factors of any member incorporated in the United States or
692 formed under the laws of any state, the District of Columbia, or any territory or possession of the
693 United States;

694 2. The entire income and apportionment factors of any member, regardless of the place incorporated
695 or formed, if the average of its property, payroll, and sales factors within the United States is 20
696 percent or more;

697 3. The entire income and apportionment factors of any member which is a domestic international
698 sales corporations as described in Internal Revenue Code Sections 991 to 994, inclusive; a foreign sales
699 corporation as described in Internal Revenue Code Sections 921 to 927, inclusive; or any member which
700 is an export trade corporation, as described in Internal Revenue Code Sections 970 to 971, inclusive;

701 4. Any member not described in subdivisions A 1 through A 3 of § 58.1-422.6, inclusive, shall
702 include the portion of its income derived from or attributable to sources within the United States, as
703 determined under the Internal Revenue Code without regard to federal treaties, and its apportionment
704 factors related thereto;

705 5. Any member that is a "controlled foreign corporation," as defined in Internal Revenue Code
706 Section 957, to the extent of the income of that member that is defined in Section 952 of Subpart F of
707 the Internal Revenue Code ("Subpart F income") not excluding lower-tier subsidiaries' distributions of
708 such income which were previously taxed, determined without regard to federal treaties, and the
709 apportionment factors related to that income; any item of income received by a controlled foreign
710 corporation shall be excluded if such income was subject to an effective rate of income tax imposed by
711 a foreign country greater than 90 percent of the maximum rate of tax specified in Internal Revenue
712 Code Section 11;

713 6. Any member that earns more than 20 percent of its income, directly or indirectly, from intangible
714 property or service related activities that are deductible against the business income of other members
715 of the combined group, to the extent of that income and the apportionment factors related thereto; and,

716 7. The entire income and apportionment factors of any member that is doing business in a tax haven,
717 where "doing business in a tax haven" is defined as being engaged in activity sufficient for that tax
718 haven jurisdiction to impose a tax under United States constitutional standards. If the member's business
719 activity within a tax haven is entirely outside the scope of the laws, provisions and practices that cause
720 the jurisdiction to meet the criteria established in section G of § 58.1-422.2, the activity of the member
721 shall be treated as not having been conducted in a tax haven.

722 B. Initiation and withdrawal of election

723 1. A water's-edge election is effective only if made on a timely-filed, original return for a tax year by
724 every member of the unitary business subject to tax under Title 58.1 of the Code of Virginia. The
725 Director shall develop rules and regulations governing the impact, if any, on the scope or application of
726 a water's-edge election, including termination or deemed election, resulting from a change in the
727 composition of the unitary group, the combined group, the taxpayer members, and any other similar
728 change.

729 2. Such election shall constitute consent to the reasonable production of documents and taking of
730 depositions in accordance with the laws of the Commonwealth relating to discovery.

731 3. In the discretion of the Director, a water's-edge election may be disregarded in part or in whole,
732 and the income and apportionment factors of any member of the taxpayer's unitary group may be
733 included in the combined report without regard to the provisions of this section, if any member of the
734 unitary group fails to comply with any provision of this Article or if a person otherwise not included in
735 the water's-edge combined group was availed of with a substantial objective of avoiding state income

tax.

4. A water's-edge election is binding for and applicable to the tax year it is made and all tax years thereafter for a period of 10 years. It may be withdrawn or reinstituted after withdrawal, prior to the expiration of the 10 year period, only upon written request for reasonable cause based on extraordinary hardship due to unforeseen changes in state tax statutes, law, or policy, and only with the written permission of the Director. If the Director grants a withdrawal of election, he or she shall impose reasonable conditions as necessary to prevent the evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal. Upon the expiration of the 10 year period, a taxpayer may withdraw from the water's edge election. Such withdrawal must be made in writing within one year of the expiration of the election, and is binding for a period of 10 years, subject to the same conditions as applied to the original election. If no withdrawal is properly made, the water's edge election shall be in place for an additional 10 year period, subject to the same conditions as applied to the original election.

§ 58.1-512. Land preservation tax credits for individuals and corporations.

A. For taxable years beginning on or after January 1, 2000, there shall be allowed as a credit against the tax liability imposed by §§ 58.1-320 and 58.1-400, an amount equal to ~~50%~~ 50 percent of the fair market value of any land or interest in land located in Virginia which is conveyed for the purpose of agricultural and forestal use, open space, natural resource, and/or biodiversity conservation, or land, agricultural, watershed and/or historic preservation, as an unconditional donation by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. For such conveyances made on or after January 1, 2007, the tax credit shall be ~~40%~~ 40 percent of the fair market value of the land or interest in land so conveyed.

B. The fair market value of qualified donations made under this section shall be determined in accordance with § 58.1-512.1 and substantiated by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions. The value of the donated interest in land that qualifies for credit under this section, as determined according to appropriate federal law and regulations, shall be subject to the limits established by United States Internal Revenue Code § 170(e). In order to qualify for a tax credit under this section, the qualified appraisal shall be signed by the qualified appraiser, who must be licensed in the Commonwealth of Virginia as provided in § 54.1-2011, and a copy of the appraisal shall be submitted to the Department. In the event that any appraiser falsely or fraudulently overstates the value of the contributed property in an appraisal that the appraiser has signed, the Department may disallow further appraisals signed by the appraiser and shall refer the appraiser to the Real Estate Appraiser Board for appropriate disciplinary action pursuant to § 54.1-2013, which may include, but need not be limited to, revocation of the appraiser's license. Any appraisal that, upon audit by the Department, is determined to be false or fraudulent, may be disregarded by the Department in determining the fair market value of the property and the amount of tax credit to be allowed under this section.

C. 1. The amount of the credit that may be claimed by each taxpayer, including credit claimed by applying unused credits as provided under subsection C of § 58.1-513, shall not exceed \$50,000 for 2000 taxable years, \$75,000 for 2001 taxable years, \$100,000 for each of 2002 through 2008 taxable years, \$50,000 for each of 2009 ~~and~~ 2010, 2011, and 2012 taxable years, and \$100,000 for ~~2011~~ 2013 taxable years and for each taxable year thereafter. In addition, for each taxpayer, in any one taxable year the credit used may not exceed the amount of individual, fiduciary or corporate income tax otherwise due. Any portion of the credit that is unused in any one taxable year may be carried over for a maximum of 10 consecutive taxable years following the taxable year in which the credit originated until fully expended. For taxpayers affected by the credit reduction for taxable years 2009 and 2010, any portion of the credit that is unused in any one taxable year may be carried over for a maximum of ~~12~~ 14 consecutive taxable years following the taxable year in which the credit originated until fully expended.

2. Qualified donations shall include the conveyance of a fee interest in real property or the conveyance in perpetuity of a less-than-fee interest in real property, such as a conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction, provided that such less-than-fee interest qualifies as a charitable deduction under § 170(h) of the United States Internal Revenue Code of 1986, as amended.

The Department of Conservation and Recreation shall compile an annual report on qualified donations of less-than-fee interests accepted by any public or private conservation agency in the respective calendar year and shall submit the report by December 1 of each year to the Chairmen of the House Committee on Appropriations, House Committee on Finance, and the Senate Committee on Finance. Qualified donations shall not include the conveyance of a fee interest, or a less-than-fee interest, in real property by a charitable organization that (i) meets the definition of "holder" in

797 § 10.1-1009 and (ii) holds one or more conservation easements.

798 3. Any fee interest, or a less-than-fee interest, in real property that has been dedicated as open space
799 within, or as part of, a residential subdivision or any other type of residential or commercial
800 development; dedicated as open space in, or as part of, any real estate development plan; or dedicated
801 for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan,
802 or building permits shall not be a qualified donation under this article.

803 4. Qualified donations shall be eligible for the tax credit herein described if such donations are made
804 to the Commonwealth of Virginia, an instrumentality thereof, or a charitable organization described in
805 § 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, if such charitable
806 organization (i) meets the requirements of § 509(a)(2) or (ii) meets the requirements of § 509(a)(3) and
807 is controlled by an organization described in § 509(a)(2).

808 5. The preservation, agricultural preservation, historic preservation or similar use and purpose of such
809 property shall be assured in perpetuity. In the case of conveyances of a fee interest to a charitable
810 organization that is a "holder" as defined in § 10.1-1009, the credit shall not be allowed until the
811 charitable organization agrees that subsequent conveyances of the fee interest in the property will be (i)
812 subject to a previous conveyance in perpetuity of a conservation easement, as that term is defined in
813 § 10.1-1009, or subject to the conveyance in perpetuity of an open-space easement, as that term is
814 defined in § 10.1-1700, or (ii) conveyed to the Commonwealth of Virginia or to a federal conservation
815 agency. No credit shall be allowed with respect to any subsequent conveyances by the charitable
816 organization.

817 D. The issuance of tax credits under this article for donations made on and after January 1, 2007,
818 shall be in accordance with procedures and deadlines established by the Department and shall be
819 administered under the following conditions:

820 1. The taxpayer shall apply for a credit after completing the donation by submitting a form or forms
821 prescribed by the Department in consultation with the Department of Conservation and Recreation. If the
822 application requests a credit of \$1 million or more, then a copy of the application shall also be filed
823 with the Department of Conservation and Recreation by the taxpayer. The application shall include, but
824 not be limited to:

- 825 a. A description of the conservation purpose or purposes being served by the donation;
826 b. The fair market value of land being donated in the absence of any easement or other restriction;
827 c. The public benefit derived from the donation;
828 d. The extent to which water quality best management practices will be implemented on the property;
829 and
830 e. Whether the property is fully or partially forested and a forest management plan is included in the
831 terms of the donation.

832 2. Applications for otherwise qualified donations of a less-than-fee interest shall be accompanied by
833 an affidavit describing how the donated interest in land meets the requirements of § 170(h) of the United
834 States Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. The
835 application with accompanying affidavit shall be submitted to the Department of Taxation, with a copy
836 also provided to the Department of Conservation and Recreation.

837 3. a. No credit in the amount of \$1 million or more shall be issued with respect to a donation unless
838 the conservation value of the donation has been verified by the Director of the Department of
839 Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation
840 Foundation for this purpose. Such criteria and subsequent amendments shall be exempt from the
841 Administrative Process Act (§ 2.2-4000 et seq.), but the Virginia Land Conservation Foundation shall
842 provide for adequate public participation, including adequate notice and opportunity to provide
843 comments on the proposed criteria. The Director shall act on applications within 90 days of his receipt
844 of a complete application and shall notify the taxpayer and the Department of Taxation of his action.

845 b. For purposes of determining whether a credit requires verification of the conservation value, the
846 credits allowed under this article with respect to donations of any other portion of a recorded parcel of
847 land within the preceding 11 years shall be aggregated with the credit claimed for the current donation.
848 This subdivision shall not apply if (i) all owners of the parcel who have been allowed credit for a
849 qualified donation are not affiliated with the person or entity seeking credit for the current donation of a
850 different portion of the parcel and (ii) in the case of an individual seeking credit, the individual has not
851 previously made a qualified donation for any portion of the parcel and is not an immediate family
852 member of any such owners.

853 4. a. Tax credits shall be issued on a calendar year basis, and in no case shall the Department issue
854 more than the maximum allowed for the calendar year. For donations made in calendar year 2007 the
855 maximum allowed is \$100 million. The credits shall be issued in the order that each complete
856 application is received. If more than one application is received at the same time, the credits with
857 respect to those applications shall be issued in the order that the conveyances were recorded in the
858 appropriate circuit court of the Commonwealth. In the event that a credit requires verification of the

conservation value by the Department of Conservation and Recreation and such verification has not been received at the time the maximum \$100 million allowed is reached for the calendar year of the donation, such credit shall not be issued for that calendar year but shall be issued in the calendar year that the conservation value of the credit is verified by the Department of Conservation and Recreation.

b. Beginning with calendar year 2008, the \$100 million amount contained in subdivision 4a shall be increased by an amount equal to \$100 million multiplied by the percentage by which the consumer price index for all-urban consumers published by the United States Department of Labor (CPI-U) for the 12-month period ending August 31 of the preceding year exceeds the CPI-U for the 12-month period ending August 31, 2006.

5. a. Any taxpayer that has been issued a tax credit by the Department shall be allowed to use such credit for his or its taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable years in accordance with the 10 consecutive taxable year carryforward provisions of this article, except for any taxpayer affected by the credit limitation for taxable years 2009 ~~and~~, 2010, 2011, and 2012. Such a taxpayer shall be allowed to use such credit for his or its taxable year that begins in the calendar year for which such credit was issued and for succeeding taxable years in accordance with the ~~12~~ 14 consecutive taxable year carryforward provisions of this article.

b. Any taxpayer to whom a credit has been transferred may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than 11 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer, except for any taxpayer affected by the credit limitation for taxable years 2009 ~~and~~, 2010, 2011, and 2012. Such a taxpayer may use such credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but in no event may such transferred credit be used more than ~~13~~ 15 years after it was originally issued by the Department or in any taxable year of such taxpayer that ended prior to the date of transfer.

6. Neither the verification of conservation value by the Department of Conservation and Recreation nor the issuance of a credit by the Department of Taxation shall in any way be construed or interpreted as prohibiting the Department of Taxation or the Tax Commissioner from auditing any credit claimed pursuant to the provisions of this article or from assessing tax relating to the claiming of any credit under this article.

E. In any review or appeal before the Tax Commissioner or in any court in the Commonwealth the burden of proof shall be on the taxpayer to show that the fair market value and conservation value at the time of the qualified donation is consistent with this section and that all requirements of this article have been satisfied.

§ 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.

"Audio work" means a series of musicals, spoken, or other sounds, including a ringtone.

"Audiovisual work" means a series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.

"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.

"Computer service" includes:

1. Computer facilities management and operation;
2. Custom computer programming;
3. Computer system planning and design that integrate computer hardware, software, and communication technologies;

4. Computer disaster recovery;

5. Data processing, storage, and recovery; or

6. Hardware or software installation, maintenance, and repair.

"Computer service" shall not include:

- a. Internet access, as defined in the federal Internet Tax Freedom Act;

- b. Typing or data entry on word processing equipment;

920 c. *Computer training*;
921 d. *The installation, maintenance, or repair of tangible personal property other than computer*
922 *hardware or software that includes computer hardware or software as a component part; or*
923 e. *A service otherwise described in 1 through 5 that is provided in connection with (i) electronic*
924 *fund transfers, financial transactions, automated teller machine transactions, or other banking or trust*
925 *services, (ii) business management, account management, personnel, payroll, employee benefit, or other*
926 *administrative services, (iii) educational, legal, accounting, architectural, actuarial, medical, medical*
927 *diagnostic, or other professional services, or (iv) telecommunications services.*
928 "Cost price" means the actual cost of an item or article of tangible personal property computed in the
929 same manner as the sales price as defined in this section without any deductions therefrom on account
930 of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.
931 "Custom program" means a computer program which is specifically designed and developed only for
932 one customer. The combining of two or more prewritten programs does not constitute a custom
933 computer program. A prewritten program that is modified to any degree remains a prewritten program
934 and does not become custom.
935 "Digital property" means (i) an audio work, (ii) an audiovisual work, (iii) a book, magazine,
936 newspaper, newsletter, report, or another publication, or (iv) a photograph or greeting card that (a) is
937 delivered or accessed electronically, (b) is not sold in a tangible medium, and (c) would be taxable
938 under this chapter if sold in a tangible medium.
939 "Distribution" means the transfer or delivery of tangible personal property for use, consumption, or
940 storage by the distributee, and the use, consumption, or storage of tangible personal property by a
941 person who has processed, manufactured, refined, or converted such property, but does not include the
942 transfer or delivery of tangible personal property for resale or any use, consumption, or storage
943 otherwise exempt under this chapter.
944 "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental
945 of tangible personal property or for furnishing services, computed with the same deductions, where
946 applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use,
947 but not less frequently than monthly.
948 "Gross sales" means the sum total of all retail sales of tangible personal property or services as
949 defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not
950 include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the
951 Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the
952 article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city
953 under § 58.1-605 or 58.1-606.
954 "Import" and "imported" are words applicable to tangible personal property imported into the
955 Commonwealth from other states as well as from foreign countries, and "export" and "exported" are
956 words applicable to tangible personal property exported from the Commonwealth to other states as well
957 as to foreign countries.
958 "In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth
959 of Virginia and includes all territory within these limits owned by or ceded to the United States of
960 America.
961 "Information service" means a service that generates, acquires, stores, processes, or retrieves data
962 and information and delivers it electronically to or allows electronic access by a consumer whose
963 primary purpose for using the service is to obtain the processed data or information.
964 "Integrated process," when used in relation to semiconductor manufacturing, means a process that
965 begins with the research or development of semiconductor products, equipment, or processes, includes
966 the handling and storage of raw materials at a plant site, and continues to the point that the product is
967 packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing,
968 any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be
969 deemed used as part of the integrated process if its use contributes, before, during, or after production,
970 to higher product quality, production yields, or process efficiencies. Except as otherwise provided by
971 law, such term shall not mean general maintenance or administration.
972 "Internet" means collectively, the myriad of computer and telecommunications facilities, which
973 comprise the interconnected world-wide network of computer networks.
974 "Internet service" means a service that enables users to access proprietary and other content,
975 information electronic mail, and the Internet as part of a package of services sold to end-user
976 subscribers.
977 "Lease or rental" means the leasing or renting of tangible personal property and the possession or use
978 thereof by the lessee or renter for a consideration, without transfer of the title to such property.
979 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting
980 with the handling and storage of raw materials at the plant site and continuing through the last step of
981 production where the product is finished or completed for sale and conveyed to a warehouse at the

production site, and also includes equipment and supplies used for production line testing and quality control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

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

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

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

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

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

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

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

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

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

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

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

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

operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; and (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

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

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

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

"Ringtone" means a digitized sound file that is downloaded onto a device and that may be used to alert the user of the device with respect to a communication.

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

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

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

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

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

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

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

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

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

§ 58.1-604.7. *Taxation of digital property.*

The taxes imposed under §§ 58.1-603 and 58.1-604 and imposed pursuant to this chapter shall be imposed upon digital property regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. Such taxes shall not apply to a service that is otherwise taxed under this chapter or to an information service.

§ 58.1-604.8. *Taxation of computer services.*

A. The taxes imposed under §§ 58.1-603 and 58.1-604 and imposed pursuant to this chapter shall be imposed upon computer services. However, such taxes shall not apply to custom computer software services relating to procedures and programs that:

1. Otherwise are taxable under this title;

2. Are to be used by a specific person;

3. Are (i) created for that person, or (ii) contain standard or proprietary routines that incorporate significant creative input to customize the procedures and programs for that person; and

4. Do not constitute a program, procedure, or documentation that is mass produced and sold to (a) the general public, or (b) persons associated in a trade, profession, or industry.

B. Such taxes shall not apply to the sale of an optional computer software maintenance contract if the buyer does not have a right, as part of the contract, to receive at no additional cost software products that are separately priced and marketed by the vendor.

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

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

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

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

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

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

4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this

Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;

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

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

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

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

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

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

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

A dealer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the dealer enters into an agreement with a resident of the Commonwealth under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet site or otherwise, to the dealer if the cumulative gross receipts from sales by the dealer to purchasers in the Commonwealth who are referred to the dealer by all residents with this type of agreement with the dealer are in excess of \$10,000 during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident with whom the dealer has an agreement did not engage in any solicitation in the Commonwealth on behalf of the dealer that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question;

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

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

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

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

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

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

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

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

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

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

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

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

E. In addition to the jurisdictional standards contained in subsection C of this section, nothing

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

§ 58.1-901. Definitions.

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

"Decedent" means a deceased person.

"Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow. *For deaths occurring on or after July 1, 2010, in no event (including for purposes of the computations under § 58.1-901.1) shall such maximum amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on January 1, 1978.*

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Interest in a closely held business" means an "interest in a closely held business" as defined in § 6166 of the Internal Revenue Code of 1986, as amended or renumbered, or the successor provision of the laws of the United States.

"Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

"Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

"Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

"State" means any state, territory or possession of the United States and the District of Columbia.

"Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

"Working farm" means an interest in a closely held business that operates as an active trade or business for agricultural purposes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time.

§ 58.1-901.1. *Date of death for decedents dying on or after July 1, 2010.*

For deaths occurring on or after July 1, 2010, solely for purposes of computing the tax due under this article or Article 4 (§ 58.1-931 et seq.) of this chapter, and regardless of whether or not the laws of the United States require that a federal estate tax return be filed, the personal representative shall compute the federal estate tax as if the decedent had died on January 1, 2009.

§ 58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident defined.

A. 1. A tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B.

2. *For deaths occurring on or after July 1, 2010, but prior to July 1, 2013, a tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident whose gross estate exceeds \$5 million, subject, where applicable, to the credit provided for in subsection B. However, no tax shall be imposed on a gross estate if the majority of the assets of the total estate are an interest in a closely held business or working farm.*

B. If the real and tangible personal property of a resident is located outside of the Commonwealth and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be

1289 credited with the lesser of:

- 1290 1. The amount of the death tax paid the other state and credited against the federal estate tax; or
1291 2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the
1292 value of that part of the gross estate over which another state or states have jurisdiction to the same
1293 extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such
1294 other state or states and the denominator of which is the value of the decedent's gross estate.

1295 C. Property of a resident includes:

- 1296 1. Real property situated in the Commonwealth of Virginia;
1297 2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and
1298 3. Intangible personal property owned by the resident regardless of where it is located.
1299 § 58.1-905. Filing returns; payment of tax due thereon.

1300 A. 1. The personal representative of every estate subject to the tax imposed by this chapter who is
1301 required by the laws of the United States to file a federal estate tax return shall file with the
1302 Department, on or before the date the federal estate tax return is required to be filed: (i) a return for the
1303 tax due under this chapter; and (ii) a copy of the federal estate tax return.

1304 2. *If the personal representative of any estate subject to the tax imposed by this chapter is not*
1305 *required by the laws of the United States to file a federal estate tax return, then the personal*
1306 *representative shall file with the Department a return for the tax due under this chapter within the 180*
1307 *days immediately following the death of the decedent.*

1308 B. 1. If the personal representative has obtained an extension of time for filing the federal estate tax
1309 return or paying the federal estate tax or any portion thereof, the filing required by ~~subsection A~~
1310 *subdivision A 1* or payment required by subsection C shall be similarly extended until the end of the
1311 time period granted in the federal extension. Upon obtaining an extension of time for filing the federal
1312 estate tax return, or paying the federal estate tax or any portion thereof, the personal representative shall
1313 provide the Department with a true copy of the instrument providing for this extension.

1314 2. *For personal representatives described under subdivision A 2, the Department may grant an*
1315 *extension of time for filing the state estate tax return or remitting to the Department the tax due*
1316 *pursuant to this chapter or any portion of the tax due. The Department shall establish procedures and*
1317 *conditions for an extension.*

1318 C. The tax due under this chapter shall be paid by the personal representative to the Department not
1319 later than the date specified under subsection A or B. If such tax is paid pursuant to subsection B,
1320 interest, at a rate equal to the rate of interest established pursuant to § 58.1-15, shall be added for the
1321 period between the date when such tax would have been due had no extension been granted and the
1322 date of full payment.

1323 D. Notwithstanding any other provision of this section, the extensions provided to individual
1324 taxpayers under subdivisions 1 and 2 of subsections F and G of § 58.1-344 shall be applicable in the
1325 same manner to the tax imposed by this chapter.

1326 2. **That the provisions of this act amending § 58.1-512 of the Code of Virginia shall be effective**
1327 **for taxable years beginning on or after January 1, 2011.**

1328 3. **That all revenues generated pursuant to the provisions of this act from new taxes, increases in**
1329 **the rates of existing taxes, and all other provisions of this act shall be appropriated for funding**
1330 **the Standards of Quality prescribed pursuant to Article VIII, Section 2 of the Constitution of**
1331 **Virginia.**