

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 15.2-4838.1, 33.1-23.03:8, 33.1-23.5:1, 58.1-300, 58.1-520, as it is currently effective and as it may become effective, 58.1-601, 58.1-602, 58.1-603, 58.1-604, 58.1-604.1, 58.1-605, 58.1-606, 58.1-608.3, 58.1-612, as it is currently effective and as it may become effective, 58.1-614, 58.1-615, 58.1-625, as it is currently effective and as it shall become effective, 58.1-635, 58.1-638, 58.1-639, 58.1-811, 58.1-2201, 58.1-2217, 58.1-2230, 58.1-2249, 58.1-2251, 58.1-2259, 58.1-2289, as it is currently effective, 58.1-2295, 58.1-2299.20, 58.1-2401, 58.1-2402, 58.1-2425, 58.1-2701, as it is currently effective, 58.1-2706, and 58.1-2708 of the Code of Virginia; to amend Chapter 896 of the Acts of Assembly of 2007; to amend the Code of Virginia by adding sections numbered 15.2-4838.01, 33.1-23.5:3, 58.1-603.1, 58.1-604.01, 58.1-638.2, 58.1-638.3, and 58.1-802.2; to amend the Code of Virginia by adding in Chapter 17 of Title 58.1 an article numbered 10, consisting of a section numbered 58.1-1742; and to repeal Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of Virginia, §§ 58.1-609.13, 58.1-2289, as it may become effective, and 58.1-2701, as it may become effective, of the Code of Virginia, and the second enactment of Chapter 822 of the Acts of Assembly of 2009, as amended by Chapter 535 of the Acts of Assembly of 2012, relating to revenues and appropriations primarily for transportation.

[H 2313]

Approved

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

1. That §§ 15.2-4838.1, 33.1-23.03:8, 33.1-23.5:1, 58.1-300, 58.1-520, as it is currently effective and as it may become effective, 58.1-601, 58.1-602, 58.1-603, 58.1-604, 58.1-604.1, 58.1-605, 58.1-606, 58.1-608.3, 58.1-612, as it is currently effective and as it may become effective, 58.1-614, 58.1-615, 58.1-625, as it is currently effective and as it shall become effective, 58.1-635, 58.1-638, 58.1-639, 58.1-811, 58.1-2201, 58.1-2217, 58.1-2230, 58.1-2249, 58.1-2251, 58.1-2259, 58.1-2289, as it is currently effective, 58.1-2295, 58.1-2299.20, 58.1-2401, 58.1-2402, 58.1-2425, 58.1-2701, as it is currently effective, 58.1-2706, and 58.1-2708 of the Code of Virginia, and Chapter 896 of the Acts of Assembly of 2007 are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 15.2-4838.01, 33.1-23.5:3, 58.1-603.1, 58.1-604.01, 58.1-638.2, 58.1-638.3, and 58.1-802.2; and by adding in Chapter 17 of Title 58.1 an article numbered 10, consisting of a section numbered 58.1-1742, as follows:

**§ 15.2-4838.01. Northern Virginia Transportation Authority Fund established.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Northern Virginia Transportation Authority Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§ 58.1-638, 58.1-802.2, and 58.1-1742, any other funds that may be appropriated by the General Assembly, and any funds that may be received from any other source shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

The amounts dedicated to the Fund pursuant to §§ 58.1-638, 58.1-802.2, and 58.1-1742 shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to the Authority as soon as practicable. If the Authority determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to § 15.2-4838.1, the Authority may invest such excess moneys to the same extent as provided in § 33.1-23.03:5 for excess funds in the Transportation Trust Fund.

The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of local, federal, or state revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

**§ 15.2-4838.1. Use of certain revenues by the Authority.**

A. All moneys received by the Authority pursuant to §§ 58.1-638, 58.1-802.2, and 58.1-1742, and the proceeds of bonds issued pursuant to § 15.2-4839, shall be used by the Authority solely for transportation purposes benefiting those counties and cities that are embraced by the Authority.

B. ~~Forty~~ 1. Except as provided in subdivision 2, 30 percent of the revenues received by the Authority under subsection A shall be distributed on a pro rata basis, with each locality's share being the total of

such fees *fee* and taxes assessed or imposed by the Authority and received by the Authority that are generated or attributable to the locality divided by the total of such fees *fee* and taxes assessed or imposed by the Authority and received by the Authority. Of the revenues distributed pursuant to this subsection (i) in the Cities of Alexandria, Fairfax, and Falls Church and the County of Arlington the first 50% shall be used solely for urban or secondary road construction and improvements and for public transportation purposes; and (ii) in the remaining localities, the first 50% shall be used solely for urban or secondary road construction and improvements. The remainder, as determined solely by the applicable locality, *such revenues* shall be used either for additional urban or secondary road construction; *for other capital improvements that reduce congestion*; for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by the Authority; or for public transportation purposes. Solely for purposes of calculating the 40% of revenues to be distributed pursuant to this subsection, the revenue generated pursuant to § 58.1-3221.3 and Article 8 (§ 15.2-2317 et seq.) of Chapter 22 of this title by the counties and cities embraced by the Authority shall be considered revenue of the Authority. None of the revenue distributed by this subsection may be used to repay debt issued before July 1, 2007 2013. Each locality shall *create a separate, special fund in which all revenues received pursuant to this subsection and from the tax imposed pursuant to § 58.1-3221.3 shall be deposited*. Each locality shall provide annually to the Northern Virginia Transportation Authority sufficient documentation as required by the Authority showing that the funds distributed under this subsection were used as required by this subsection.

2. If a locality has not deposited into its special fund (i) revenues from the tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or (ii) an amount, from sources other than moneys received from the Authority, that is equivalent to the revenue that the locality would receive if it was imposing the maximum tax authorized by § 58.1-3221.3, then the amount of revenue distributed to the locality pursuant to subdivision shall be reduced by the difference between the amount of revenue that the locality would receive if it was imposing the maximum tax authorized by such section and the amount of revenue deposited into its special fund pursuant to subdivision (i) or (ii), as applicable. The amount of any such reduction in revenue shall be redistributed according to subsection C. The provisions of this subdivision shall be ongoing and apply over annual periods as determined by the Authority.

C. 1. The remaining ~~60%~~ 70 percent of the revenues ~~from such sources~~ received by the Authority under subsection A, plus the amount of any revenue to be redistributed pursuant to subsection B, shall be used by the Authority solely for transportation projects and purposes that benefit the counties and cities embraced by the Authority to fund (i) transportation projects selected by the Authority that are contained in the regional transportation plan in accordance with § 15.2-4830 and that have been rated in accordance with § 33.1-13.03:1 or (ii) mass transit capital projects that increase capacity. The Authority shall give priority to selecting projects that are expected to provide the greatest congestion reduction relative to the cost of the project and shall document this information for each project selected. Such projects selected by the Authority for funding shall be located (a) only in localities embraced by the Authority or (b) in adjacent localities but only to the extent that such extension is an insubstantial part of the project and is essential to the viability of the project within the localities embraced by the Authority.

1. The revenues under this subsection shall be used first to pay any debt service owing on any bonds issued pursuant to § 15.2-4839, and then as follows:

a. The next \$50 million each fiscal year shall be distributed to the Washington Metropolitan Area Transit Authority (WMATA) and shall be used for capital improvements benefiting the area embraced by the Authority for WMATA's transit service (Metro). The Authority shall first make use of that portion of such annual distribution as may be necessary under the requirements of federal law for the payment of federal funds to WMATA, but only if the matching federal funds are exclusive of and in addition to the amount of other federal funds appropriated for such purposes and are in an amount not less than the amount of such funds appropriated in the federal fiscal year ending September 30, 2007;

For each year after 2018 any portion of the amount distributed pursuant to this subsection may be used for mass transit improvements in Prince William County;

b. The next \$25 million each fiscal year shall be distributed to the Virginia Railway Express for operating and capital improvements, including but not limited to track lease payments, construction of parking, dedicated rail on the Fredericksburg line, rolling stock, expanded service in Prince William County, and service as may be needed as a result of the Base Realignment and Closure Commission's action regarding Fort Belvoir.

2. All transportation projects undertaken by the Northern Virginia Transportation Authority shall be completed by private contractors accompanied by performance measurement standards, and all contracts shall contain a provision granting the Authority the option to terminate the contract if contractors do not meet such standards. Notwithstanding the foregoing, any locality may provide engineering services or

right-of-way acquisition for any project with its own forces. The Authority shall avail itself of the strategies permitted under the Public-Private Transportation Act (§ 56-556 et seq.) whenever feasible and advantageous. The Authority is independent of any state or local entity, including the Virginia Department of Transportation (VDOT) and the Commonwealth Transportation Board (CTB), but the Authority, VDOT and CTB shall consult with one another to avoid duplication of efforts and, at the option of the Authority, may combine efforts to complete specific projects. Notwithstanding the foregoing, at the request of the Authority, VDOT may provide the Authority with engineering services or right-of-way acquisition for the project with its own forces. ~~When determining what projects to construct under this subsection, the Authority shall base its decisions on the combination that (i) equitably distributes the funds throughout the localities; and (ii) constructs projects that move the most people or commercial traffic in the most cost-effective manner, and on such other factors as approved by the Authority.~~

3. All revenues deposited to the credit of the Authority shall be used for projects benefiting the localities embraced by the Authority, with each locality's total long-term benefits being approximately equal to ~~With regard to the revenues distributed under subdivision 1, each locality's total long-term benefit shall be approximately equal to the proportion of the total of the fees and taxes received by the~~ Authority that are generated by or attributable to the locality divided by the total of such fees and taxes received by the Authority.

D. For road construction and improvements pursuant to subsection B, the Department of Transportation may, on a reimbursement basis, provide the locality with planning, engineering, right-of-way, and construction services for projects funded in whole by the revenues provided to the locality by the Authority.

**§ 33.1-23.03:8. Priority Transportation Fund established.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Priority Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. All funds as may be designated in the appropriation act for deposit to the Fund shall be paid into the state treasury and credited to the Fund. Such funds shall include:

1. A portion of the moneys actually collected, including penalty and interest, attributable to any increase in revenues from the taxes imposed under Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1, with such increase being calculated as the difference between such tax revenues collected in the manner prescribed under Chapter 22 less such tax revenues that would have been collected using the prescribed manner in effect immediately before the effective date of Chapter 22, computed without regard to increases in the rates of taxes under Chapter 22 pursuant to enactments of the 2007 Session of the General Assembly. The portion to be deposited to the Fund shall be the moneys actually collected from such increase in revenues and allocated for highway and mass transit improvement projects as set forth in § 33.1-23.03:2, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section. There shall also be deposited into the Fund all additional federal revenues attributable to Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1;

2. Beginning with the fiscal year ending June 30, 2000, and for fiscal years thereafter, all revenues that exceed the official forecast, pursuant to § 2.2-1503, for (i) the Highway Maintenance and Operating Fund and (ii) the allocation to highway and mass transit improvement projects as set forth in § 33.1-23.03:2, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section;

3. 2. All revenues deposited into the Fund pursuant to § 58.1-2531;

3. All revenues deposited into the Fund pursuant to subsection E of § 58.1-2289; and

4. Any other such funds as may be transferred, allocated, or appropriated.

All moneys in the Fund shall first be used for debt service payments on bonds or obligations for which the Fund is expressly required for making debt service payments, to the extent needed. The Fund shall be considered a part of the Transportation Trust Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes enumerated in subsection B of this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller.

B. The Commonwealth Transportation Board shall use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. The Board may use the Fund either (i) by expending amounts therein on such projects directly, (ii) by payment to any authority, locality, commission or other entity for the purpose of paying the costs thereof, or (iii) by using such amounts to support, secure, or leverage financing for such projects. No expenditures from or other use of amounts in the Fund shall be considered in allocating highway maintenance and construction funds under § 33.1-23.1 or apportioning Transportation Trust Fund funds under § 58.1-638, but shall be in addition

thereto. The Board shall use the Fund to facilitate the financing of priority transportation projects as designated by the General Assembly; provided, however, that, at the discretion of the Commonwealth Transportation Board, funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

C. Notwithstanding any other provision of this section, beginning July 1, 2007, no bonds, obligations, or other evidences of debt (the bonds) that expressly require as a source for debt service payments or for the repayment of such bonds the revenues of the Fund, shall be issued or entered into unless at the time of the issuance the revenues then in the Fund or reasonably anticipated to be deposited into the Fund pursuant to the law then in effect are by themselves sufficient to make 100% percent of the contractually required debt service payments on all such bonds, including any interest related thereto and the retirement of such bonds.

**§ 33.1-23.5:1. Funds for counties which have withdrawn or elect to withdraw from the secondary system of state highways.**

Notwithstanding the provisions of § 33.1-23.5, pursuant to subsection A of § 33.1-23.1, the Commonwealth Transportation Board shall make the following payments to counties which have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932, and which have not elected to return: to any county having withdrawn prior to June 30, 1985, and having an area greater than 100 square miles, an amount equal to ~~\$3,616 per lane-mile for fiscal year 1986~~, *\$12,529 per lane-mile for fiscal year 2014*, and to any county having an area less than 100 square miles, an amount equal to ~~\$7,204 per lane-mile for fiscal year 1986~~ *\$17,218 per lane-mile for fiscal year 2014*; to any county that elects to withdraw after June 30, 1985, the Commonwealth Transportation Board shall establish a rate per lane-mile for the first year using (i) an amount for maintenance based on maintenance standards and unit costs used by the Department of Transportation to prepare its secondary system maintenance budget for the year in which the county withdraws; and (ii) an amount for administration equal to five percent of the maintenance figure determined in *clause* (i) above. The payment rates shall be adjusted annually by the Board in accordance with procedures established for adjusting payments to cities and towns under § 33.1-41.1, and lane mileage shall be adjusted annually to include (i) streets and highways accepted for maintenance in the county system by the local governing body; or (ii) streets and highways constructed according to standards set forth in the county subdivision ordinance or county thoroughfare plan, and being not less than the standards set by the Department of Transportation. Such counties shall, in addition, each receive for construction from funds allocated pursuant to subdivision B 3 of § 33.1-23.1 an annual amount calculated in the same manner as payments for construction in the state secondary highway system are calculated.

Payment of the funds shall be made in four equal sums, one in each quarter of the fiscal year, and shall be reduced, in the case of each such county, by the amount of federal-aid construction funds credited to each such county.

The chief administrative officer of such counties receiving such funds shall make annual reports of expenditures to the Board, in such form as the Board shall prescribe, accounting for all expenditures, including delineation between construction and maintenance expenditures and reporting on their performance as specified in subdivision B 3 of § 33.1-23.02. Such reports shall be included in the scope of the annual audit of each county conducted by independent certified public accountants.

**§ 33.1-23.5:3. Hampton Roads Transportation Fund established.**

A. *There is hereby created in the state treasury a special nonreverting fund to be known as the Hampton Roads Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to § 58.1-638 and Chapter 22.1 (§ 58.1-2291 et seq.) of Title 58.1 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The moneys deposited in the fund shall be used solely for new construction projects on new or existing roads in the Hampton Roads Region as approved by the Hampton Roads Transportation Planning Organization.*

*The amounts dedicated to the Fund shall be deposited monthly by the Comptroller into the Fund. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of local, federal, or state revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.*

B. *For purposes of this section, the "Hampton Roads Region" shall embrace the Counties of Gloucester, Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.*

**§ 58.1-300. Incomes not subject to local taxation.**

Except as provided in § 58.1-540, ~~no~~ No county, city, town or other political subdivision of this Commonwealth shall impose any tax or levy upon incomes, incomes being hereby segregated for state taxation only.

**§ 58.1-520. (Contingent expiration) Definitions.**

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's Virginia state or local income tax refund payable pursuant to §§ 58.1-309 and 58.1-546. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § 58.1-324 B 2.

**§ 58.1-520. (Contingent effective date) Definitions.**

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's (i) Virginia state or local income tax refund payable pursuant to §§ 58.1-309 and 58.1-546 or (ii) federal income tax refund payable pursuant to § 6402 of the Internal Revenue Code. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § 58.1-324 B 2.

**§ 58.1-601. Administration of chapter.**

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter, *including the collection and administration of all state and local sales and use taxes imposed on remote sellers.*

B. *To comply with any provisions in any legislation enacted by the Congress of the United States that require states to simplify the administration of their sales and use taxes as a condition to require remote sellers to collect and remit their state and local sales taxes, the Tax Commissioner shall take all administrative actions he deems necessary to facilitate the Commonwealth's compliance with the minimum simplification requirements, including but not limited to: (i) providing adequate software and services to remote sellers and single and consolidated providers that identify the applicable destination rate, including the state and local sales tax rate (if any), to be applied on sales on which the Commonwealth imposes sales and use tax; (ii) providing certification procedures for both single providers and consolidated providers to make software and services available to remote sellers; (iii) ensuring that no more than one audit be performed or required for all state and local taxing jurisdictions within the Commonwealth; and (iv) requiring that no more than one sales and use tax return per month be filed with the Department of Taxation by any remote seller or any single or consolidated provider on behalf of such remote seller.*

C. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax

exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance ~~which~~ *that* the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

**§ 58.1-602. Definitions.**

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

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

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

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

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

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

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

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606.

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

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, such term shall not mean general maintenance or administration.

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

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

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

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of 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.

"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% *percent* 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.

"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.

*B. Notwithstanding the definitions in subsection A, to the extent that conformity to any remote collection authority legislation enacted by the Congress of the United States shall so require, the words and terms used in this chapter related to the minimum simplification requirements shall have the same meaning as provided in such federal legislation.*

#### **§ 58.1-603. Imposition of sales tax.**

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004~~ *4.3 percent:*

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.

3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

5. Of the gross sales of any services ~~which~~ *that* are expressly stated as taxable within this chapter.

#### **§ 58.1-603.1. Additional state sales tax in certain counties and cities.**

*A. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city embraced by the Northern Virginia Transportation Authority established under § 15.2-4830 a retail sales tax at the rate of 0.70 percent. Such tax shall not be levied upon food purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as*

545 *provided for the state sales tax under § 58.1-603.*

546 *The revenue generated and collected pursuant to the tax authorized under this section, less the*  
 547 *applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller in the Northern*  
 548 *Virginia Transportation Authority Fund established under § 15.2-4838.01.*

549 *B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in*  
 550 *each county and city embraced in the Hampton Roads Region, as described in subsection B of*  
 551 *§ 33.1-23.5:3, a retail sales tax at the rate of 0.70 percent. Such tax shall not be levied upon food*  
 552 *purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added to the rate of the*  
 553 *state sales tax imposed pursuant to § 58.1-603 in each such county and city and shall be subject to all*  
 554 *the provisions of this chapter and the rules and regulations published with respect thereto. No discount*  
 555 *under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered*  
 556 *and collected by the Tax Commissioner in the same manner and subject to the same penalties as*  
 557 *provided for the state sales tax under § 58.1-603.*

558 *The revenue generated and collected pursuant to the tax authorized under this section, less the*  
 559 *applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller in the Hampton*  
 560 *Roads Transportation Fund established under § 33.1-23.5:3.*

561 **§ 58.1-604. Imposition of use tax.**

562 *There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a*  
 563 *tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of*  
 564 *such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount*  
 565 *of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and*  
 566 *after August 1, 2004 4.3 percent:*

567 *1. Of the cost price of each item or article of tangible personal property used or consumed in this*  
 568 *Commonwealth. Tangible personal property which that has been acquired for use outside this*  
 569 *Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the*  
 570 *basis of its cost price if such property is brought within this Commonwealth for use within six months*  
 571 *of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition,*  
 572 *such property shall be taxed on the basis of the current market value (but not in excess of its cost price)*  
 573 *of such property at the time of its first use within this Commonwealth. Such tax shall be based on such*  
 574 *proportion of the cost price or current market value as the duration of time of use within this*  
 575 *Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that*  
 576 *such property will remain within this Commonwealth for the remainder of its useful life unless*  
 577 *convincing evidence is provided to the contrary).*

578 *2. Of the cost price of each item or article of tangible personal property stored outside this*  
 579 *Commonwealth for use or consumption in this Commonwealth.*

580 *3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same*  
 581 *transaction be taxed more than once under either section.*

582 *4. The use tax shall not apply with respect to the use of any article of tangible personal property*  
 583 *brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use,*  
 584 *while within this Commonwealth.*

585 *5. The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less*  
 586 *during any calendar year.*

587 **§ 58.1-604.01. Additional state use tax in certain counties and cities.**

588 *A. In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in*  
 589 *each county and city embraced by the Northern Virginia Transportation Authority established under*  
 590 *§ 15.2-4830 a retail use tax at the rate of 0.70 percent. Such tax shall not be levied upon food*  
 591 *purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added to the rate of the*  
 592 *state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the*  
 593 *provisions of this chapter and the rules and regulations published with respect thereto. No discount*  
 594 *under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be*  
 595 *administered and collected by the Tax Commissioner in the same manner and subject to the same*  
 596 *penalties as provided for the state use tax under § 58.1-604.*

597 *The revenue generated and collected pursuant to the tax authorized under this section, less the*  
 598 *applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller in the Northern*  
 599 *Virginia Transportation Authority Fund established under § 15.2-4838.01.*

600 *B. In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in*  
 601 *each county and city embraced in the Hampton Roads Region, as described in subsection B of*  
 602 *§ 33.1-23.5:3, a retail use tax at the rate of 0.70 percent. Such tax shall not be levied upon food*  
 603 *purchased for human consumption as defined in § 58.1-611.1. Such tax shall be added to the rate of the*  
 604 *state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the*  
 605 *provisions of this chapter and the rules and regulations published with respect thereto. No discount*

under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § 58.1-604.

The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller in the Hampton Roads Transportation Fund established under § 33.1-23.5:3.

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

In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004,~~ 4.3 percent on all tangible personal property except motor vehicles, which shall be taxed at the rate of ~~three percent~~ set forth in § 58.1-2402; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000. *However, the total rate of the state use tax in any county or city for which the tax under § 58.1-604.01 is imposed shall be 5.0 percent on all tangible personal property except motor vehicles, which shall be taxed at the rate set forth in § 58.1-2402; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.*

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

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

A transaction taxed under § 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, 58.1-1736, or 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

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

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

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

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

D. *Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to hold the remote seller or single or consolidated provider harmless for collecting the tax at the*

667 immediately preceding effective rate for any period of time prior to 30 days after notification is  
668 provided.

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

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

683 E. G. As soon as practicable after the local sales tax moneys have been paid into the state treasury in  
684 any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia  
685 in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax  
686 moneys, and such payments shall be charged to the account of each such city or county under the  
687 special fund created by this section. If errors are made in any such payment, or adjustments are  
688 otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall  
689 be corrected and adjustments made in the payments for the next two months as follows: one-half of the  
690 total adjustment shall be included in the payments for the next two months. In addition, the payment  
691 shall include a refund of amounts erroneously not paid to the city or county and not previously refunded  
692 during the three years preceding the discovery of the error. A correction and adjustment in payments  
693 described in this subsection due to the misallocation of funds by the dealer shall be made within three  
694 years of the date of the payment error.

695 G. H. Such payments to counties are subject to the qualification that in any county wherein is  
696 situated any incorporated town constituting a special school district and operated as a separate school  
697 district under a town school board of three members appointed by the town council, the county treasurer  
698 shall pay into the town treasury for general governmental purposes the proper proportionate amount  
699 received by him in the ratio that the school age population of such town bears to the school age  
700 population of the entire county. If the school age population of any town constituting a separate school  
701 district is increased by the annexation of territory since the last estimate of school age population  
702 provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this  
703 section, be added to the school age population of such town as shown by the last such estimate and a  
704 proper reduction made in the school age population of the county or counties from which the annexed  
705 territory was acquired.

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

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

726 J. K. It is further provided that if any incorporated town which would otherwise be eligible to receive  
727 funds from the county treasurer under subsection G ~~or~~ H ~~of this section~~ or I be located in a county

which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

**§ 58.1-606. To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.**

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on a local use tax.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § 58.1-605.

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

*D. Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to hold the remote seller or single or consolidated provider harmless for collecting the tax at the immediately preceding effective rate for any period of time prior to 30 days after notification is provided.*

E. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

~~E.~~ F. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

~~F.~~ G. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department,

and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

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

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

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

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

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

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

"Public facility" means (i) any auditorium, coliseum, convention center, sports facility that is designed for use primarily as a baseball stadium for a minor league professional baseball affiliated team or structures attached thereto, or conference center, which is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings, conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is owned by a foundation whose sole purpose is to benefit a state-supported university and which is attached to and is an integral part of such facility, together with any lands reasonably necessary for the conduct of the operation of such events; (iii) any hotel which is attached to and is an integral part of such facility; or (iv) any hotel that is adjacent to a convention center owned by a public entity and where the hotel owner enters into a public-private partnership whereby the locality contributes infrastructure, real property, or conference space. However, such public facility must be located in the City of Hampton, City of Lynchburg, City of Newport News, City of Norfolk, City of Portsmouth, City of Richmond, City of Roanoke, City of Salem, City of Staunton, City of Suffolk, City of Virginia Beach, or City of Winchester. Any property, real, personal, or mixed, which is necessary or desirable in connection with any such auditorium, coliseum, convention center, baseball stadium or conference center, including, without limitation, facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. A public facility shall not include residential condominiums, townhomes, or other residential units. In addition, only a new public facility, or a public facility which will undergo a substantial and significant renovation or expansion, shall be eligible under subsection C of this section. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least 50 percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least 50 percent over that existing in the preexisting facility and shall have begun after December 31, 1991; or an increase in floor space of at least 10 percent over that existing in a public facility that qualified as such under this section and was constructed after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) of this title, as limited herein. "Sales tax revenues" does not include the revenue generated by (i) the one-half 0.5 percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § 33.1-23.03:1, nor shall it include (ii) the one 1.0 percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § 58.1-638

on the basis of school age population, (iii) *the revenue generated by the 0.3 percent sales and use tax increase enacted by the 2013 Session of the General Assembly, or (iv) any sales and use tax revenues generated by increases imposed by the 2013 Session of the General Assembly and allocated to the Northern Virginia Transportation Authority Fund established under § 15.2-4838.01 or the Hampton Roads Transportation Fund established under § 33.1-23.5:3.* For a public facility that is a sports facility, "sales tax revenues" shall include such revenues generated by transactions taking place upon the premises of a baseball stadium or structures attached thereto.

B. Notwithstanding the definition of "public facility" in subsection A, a development project that meets the requirements for a "development of regional impact" set forth herein shall be deemed to be a public facility under the provisions of this section. The locality in which the public facility is located shall be entitled to all sales tax revenues generated by transactions taking place at such public facility solely to pay the cost of any bonds issued to pay the cost, or portion thereof, of such public facility pursuant to subsection C. For purposes of this subsection, the development of regional impact must be located in the City of Bristol.

For purposes of this subsection, a "development of regional impact" means a development project (i) towards which the locality contributes infrastructure or real property as part of a public-private partnership with the developer that is equal to at least 20 percent of the aggregate cost of development, (ii) that is reasonably expected to require a capital investment of at least \$50 million, (iii) that is reasonably expected to generate at least \$5 million annually in state sales and use tax revenue from sales within the development, (iv) that is reasonably expected to attract at least one million visitors annually, (v) that is reasonably expected to create at least 2,000 permanent jobs, (vi) that is located in a locality that had a rate of unemployment at least three percentage points higher than the statewide average in November 2011, and (vii) that is located in a locality that is adjacent to a state that has adopted a Border Region Retail Tourism Development District Act. Within 30 days from the date of notification by a locality that it intends to contribute infrastructure or real property as part of a public-private partnership with the developer of a development of regional impact, the Department of Taxation shall review the findings of the locality with respect to clauses (i) through (vi) and shall file a written report with the Chairmen of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance.

C. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, (v) on or after July 1, 2001, but before July 1, 2005, (vi) on or after July 1, 2004, but before July 1, 2007, (vii) on or after July 1, 2009, but before July 1, 2012, or (viii) on or after January 1, 2011, but prior to July 1, 2015, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such bonds, which entitlement shall not exceed 35 years, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed.

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

**§ 58.1-612. (Contingent expiration date) 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;

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

914 4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this  
 915 Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has  
 916 been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal  
 917 property;

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

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

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

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

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

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

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

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

936 4. Makes regular deliveries of tangible personal property within this Commonwealth by means other  
 937 than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles  
 938 other than those operated by a common carrier enter this Commonwealth more than ~~twelve~~ 12 times  
 939 during a calendar year to deliver goods sold by him;

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

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

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

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

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

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

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

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

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

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

966 E. In addition to the jurisdictional standards contained in subsection C of this section, nothing  
 967 contained herein (other than subsection D) shall limit any authority which this Commonwealth may  
 968 enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require  
 969 the collection of sales and use taxes by any dealer who regularly or systematically solicits sales within  
 970 this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster,  
 971 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.

*F. Pursuant to any federal legislation that grants states the authority to require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by such federal legislation, to require collection of sales and use tax by any remote seller, or a single or consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for sellers whose sales are less than a minimum amount, then in determining such amount, the sales made by all persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.*

**§ 58.1-612. (Contingent effective date) 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 (i) B and C or (ii) B and D 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 business in this Commonwealth by employees, independent contractors, agents or other representatives;

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 12 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. A dealer is presumed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its customers. The presumption in this subsection may be rebutted by demonstrating that the activities conducted by the commonly controlled person in the Commonwealth are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales. For purposes of this subsection, a "commonly controlled person" means any person that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered.

E. 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.

F. In addition to the jurisdictional standards contained in subsections C and D, nothing contained herein (other than subsection E) 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.

*G. Pursuant to any federal legislation that grants states the authority to require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by such federal legislation, to require collection of sales and use tax by any remote seller, or a single or consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for sellers whose sales are less than a minimum amount, then in determining such amount, the sales made by all persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.*

#### **§ 58.1-614. Vending machine sales.**

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on ~~four and one-half percent through midnight on July 31, 2004, and five percent beginning on and after August 1, 2004,~~ 5.3 percent of such wholesale purchases. *However, any dealer located in any county or city for which the taxes under §§ 58.1-603.1 and 58.1-604.01 are imposed shall be required to remit an amount based on 6.0 percent of such wholesale purchases.*

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A ~~of this section~~.

C. The provisions of subsections A and B ~~of this section~~ shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall

report only the gross receipts from machines selling items for more than 10 cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

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

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

**§ 58.1-615. Returns by dealers.**

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period. *The Tax Commissioner shall not require that more than one return per month be used or filed by any remote seller, single provider, or consolidated provider subject to the sales or use tax.*

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer who elects to file a consolidated sales tax return for any taxable period and who is required to remit payment by electronic funds transfer pursuant to subsection B of § 58.1-202.1 beginning on and after July 1, 2010, shall file his monthly return using an electronic medium prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

**§ 58.1-625. (Effective until July 1, 2017) Collection of tax.**

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid.

Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

*E. Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.*

*F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.*

Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in §§ 58.1-611.2 and 58.1-611.3 or subdivision 16 of § 58.1-609.1 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

**§ 58.1-625. (Effective July 1, 2017) Collection of tax.**

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

*E. Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.*

*F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.*

Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in § 58.1-611.2 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

**§ 58.1-635. Failure to file return; fraudulent return; civil penalties.**

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed ~~thirty~~ 30 percent in the aggregate. In no case, however, shall the penalty be less than ~~ten dollars~~ \$10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of ~~five~~ 50 percent of the

amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports his gross sales, gross proceeds or cost price, as the case may be, at fifty percent or less of the actual amount.

C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § 58.1-15, after which interest shall accrue as provided therein.

*D. Notwithstanding any other provision of this section, any remote seller, single provider, or consolidated provider who collects an incorrect amount of sales or use tax shall be relieved of any liability, including penalties and interest, if collection of the improper amount is the result of the remote seller, single provider, or consolidated provider's reasonable reliance on information that has been provided by the Commonwealth.*

**§ 58.1-638. Disposition of state sales and use tax revenue; localities' share; Game Protection Fund.**

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth.

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell, and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of \$2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however,

shall receive less than \$50,000 nor more than \$2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWAA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to § 33.1-23.03:2 shall be allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.

b. Commonwealth Space Flight Fund revenue shall be allocated by the Board of Directors to the Virginia Commercial Space Flight Authority in order to foster and stimulate the growth of the commercial space flight industry in Virginia.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be used to support the public transportation administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and maintenance parts and supplies for public transportation at a state share of 80 percent in 2002 and 95 percent in 2003 and succeeding years. These amounts may be used to support up to 95 percent of the local or nonfederal share of capital project costs for public transportation and ridesharing equipment, facilities, and associated costs. Capital costs may include debt service payments on local or agency transit bonds. The term "borne by the locality" means the local share eligible for state assistance consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance received by the locality.

c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth Transportation Board as follows:

(1) Funds for special programs, which shall include ridesharing, experimental transit, and technical assistance, shall not exceed 1.5 percent of the Fund.

(2) The Board may allocate these funds to any locality or planning district commission to finance up to 80 percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

(3) Funds allocated for experimental transit projects may be paid to any local governing body, transportation district commission, or public corporation or may be used directly by the Department of Rail and Public Transportation for the following purposes:

(a) To finance up to 95 percent of the capital costs related to the development, implementation and promotion of experimental public transportation and ridesharing projects approved by the Board.

(b) To finance up to 95 percent of the operating costs of experimental mass transportation and ridesharing projects approved by the Board for a period of time not to exceed 12 months.

(c) To finance up to 95 percent of the cost of the development and implementation of any other project designated by the Board where the purpose of such project is to enhance the provision and use of public transportation services.

d. Funds allocated for public transportation promotion and operation studies may be paid to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(1) At the approval of the Board to finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(2) To finance up to 50 percent of the local share of public transportation operations planning and technical study projects approved by the Board.

e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same

proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

f. The remaining 25 percent shall be distributed for capital purposes on the basis of 95 percent of the nonfederal share for federal projects and 95 percent of the total costs for nonfederal projects. In the event that total capital funds available under this subdivision are insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit property in the same proportion that such capital expenditure bears to the statewide total of capital projects. Prior to the annual adoption of the Six-Year Improvement Program, the Commonwealth Transportation Board may allocate up to 20 percent of the funds in the Commonwealth Mass Transit Fund designated for capital purposes to transit operating assistance if operating funds for the next fiscal year are estimated to be less than the current fiscal year's allocation, to attempt to maintain transit operations at approximately the same level as the previous fiscal year.

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal share of the total project cost.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such

population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.01, is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. *Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1, and be used for the state's share of Standards of Quality basic aid payments.*

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. *Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the following percentages of the revenue generated by a one-half percent sales and use tax, such as that paid to the Transportation Trust Fund as provided in subdivision A 1, shall be paid to the Highway Maintenance and Operating Fund:*

1. *For fiscal year 2014, an amount equal to 10 percent;*
2. *For fiscal year 2015, an amount equal to 20 percent;*

3. For fiscal year 2016, an amount equal to 30 percent; and  
 4. For fiscal year 2017 and thereafter, an amount equal to 35 percent.

The Highway Maintenance and Operating Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

H. 1. The additional revenue generated by increases in the state sales and use tax in each county and city embraced by the Northern Virginia Transportation Authority, established under § 15.2-4830, pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the Northern Virginia Transportation Authority Fund established under § 15.2-4838.01.

2. The additional revenue generated by increases in the state sales and use tax in each county and city embraced in the Hampton Roads Region, as described in subsection B of § 33.1-23.5:3, pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the Hampton Roads Transportation Fund established under § 33.1-23.5:3.

3. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the funds set forth in subdivisions 1 and 2 on the last day of each month.

I. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

H. J. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

**§ 58.1-638.2. Disposition of state and local sales tax revenue collected pursuant to federal legislation granting remote collection authority.**

Notwithstanding any provisions of § 58.1-638 to the contrary, any state and local sales and use tax revenue collected pursuant to federal legislation granting the Commonwealth authority to compel remote sellers to collect the tax for sales made into the Commonwealth shall be paid in the manner provided in this section:

1. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections F and G of §§ 58.1-605 and 58.1-606. Each locality shall be required to designate an amount equal to 50 percent of the local sales and use tax distribution to transportation needs.

2. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D of § 58.1-638.

3. The sales and use tax revenue generated by a 0.25 percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in § 58.1-638.1.

4. The Comptroller shall transfer annually to each locality that levied the local tax on fuels for domestic consumption pursuant to the former § 58.1-609.13 as of the date of enactment of the federal legislation described above an amount to compensate the locality for the locality's revenue loss resulting from cessation of the local authority to impose tax on the sale of fuel for domestic consumption due to the repeal of § 58.1-609.13. The amount paid to the locality shall be an amount equal to the locality's revenue from its tax on fuels for domestic consumption in the calendar year prior to the repeal of § 58.1-609.13, but the aggregate amount of such revenue paid to all localities shall not exceed \$7.5 million per year. If the total aggregate amount exceeds \$7.5 million, then each locality shall receive a pro rata portion based on the proportion that the locality's revenue from its tax on fuels for domestic consumption in the calendar year preceding the repeal of § 58.1-609.13 is to the total amount of such revenue in all localities that levied such tax.

5. Notwithstanding §§ 58.1-605, 58.1-606, and 58.1-638, all remaining revenue collected pursuant to this section, as estimated by the Department, shall be transferred to the Transportation Trust Fund to be allocated pursuant to § 33.1-23.03:2.

**§ 58.1-638.3. Disposition of 0.3 percent state and local sales tax for transportation.**

A. The sales and use tax revenue generated by the 0.3 percent sales and use tax increase enacted by the 2013 Session of the General Assembly shall be allocated as follows:

1. An amount equal to a 0.175 percent sales and use tax shall be deposited into the Highway Maintenance and Operating Fund;

2. An amount equal to a 0.05 percent sales and use tax shall be deposited into the Intercity Passenger Rail Operating and Capital Fund established under § 33.1-23.03:2; and

3. An amount equal to a 0.075 percent sales and use tax shall be deposited into the Commonwealth Mass Transit Fund.

*B. The net revenues distributable under this section shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the funds set forth in subsection A on the last day of each month.*

**§ 58.1-639. Transitional provisions.**

A. To the extent of the ~~one-half~~ 0.3 percent increase in the state sales and use tax rate effective ~~August 1, 2004~~ July 1, 2013, enacted by the ~~2004 Special Session I~~ 2013 Session of the Virginia General Assembly, the Tax Commissioner, upon application of the purchaser in accordance with regulations promulgated by the Commissioner, shall have the authority to refund state sales or use taxes paid on purchases of tangible personal property made pursuant to bona fide real estate construction contracts, contracts for the sale of tangible personal property, and leases, provided that the real estate construction contract, contract for the sale of tangible personal property or lease is entered into prior to the date of enactment of such increase in the state sales and use tax rate; and further provided that the date of delivery of the tangible personal property is on or before ~~October 31, 2004~~ September 30, 2013. The term "bona fide contract," when used in this section in relation to real estate construction contracts, shall include but not be limited to those contracts which are entered into prior to the enactment of such increase in the state sales and use tax rate, provided that such contracts include plans and specifications.

B. Notwithstanding the foregoing ~~October 31, 2004~~ September 30, 2013, delivery date requirement, with respect to bona fide real estate construction contracts which contain a specific and stated date of completion, the date of delivery of such tangible personal property shall be on or before the completion date of the applicable project.

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

**§ 58.1-802.2. Regional congestion relief fee.**

*In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated as the "regional congestion relief fee," is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city embraced by the Northern Virginia Transportation Authority established pursuant to § 15.2-4830 is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.25 for each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance.*

*The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.*

*No such deed, instrument, or other writing shall be admitted to record unless certification of the clerk wherein first recorded has been affixed thereto that the fee imposed pursuant to this section has been paid.*

*Fees imposed by this section shall be collected by the clerk of the court and deposited into the state treasury as soon as practicable. Such fees shall then be deposited into the Northern Virginia Transportation Authority Fund established under § 15.2-4838.01 as soon as practicable.*

**§ 58.1-811. Exemptions.**

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal

Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a security trust defined in § 55-58.1, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument; or

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means.

B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § 57-16.1;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision; or

5. Securing a loan made by an organization described in subdivision A 14 of ~~subsection A of this section.~~

C. The tax imposed by § 58.1-802 *and the fee imposed by § 58.1-802.2* shall not apply to any:

1. Transaction described in subdivisions A 6 through 13 of ~~subsection A of this section~~;

2. Instrument or writing given to secure a debt;

3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;

4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district or other political subdivision thereof;

5. Conveyance of real estate to the Commonwealth or any county, city, town, district or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § 58.1-802 *or subject to the fee under § 58.1-802.2*; or

6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-807, 58.1-808, and 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural or open space areas.

G. The words "trustee" or "trustees," as used in subdivision 2 of subsection A, subdivision 2 of subsection B, and subdivision 6 of subsection C, include the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.

#### Article 10.

#### *Transient Occupancy Tax in Northern Virginia.*

##### **§ 58.1-1742. Northern Virginia transient occupancy tax.**

*In addition all other fees and taxes imposed under law, there is hereby imposed an additional transient occupancy tax at the rate of three percent of the amount of the charge for the occupancy of any room or space occupied that is located in any county or city embraced by the Northern Virginia Transportation Authority established under § 15.2-4830.*

*The tax imposed under this section shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.*

*The revenue generated and collected from the tax shall be deposited by the Comptroller in the Northern Virginia Transportation Authority Fund established under § 15.2-4838.01 on at least a monthly basis.*

##### **§ 58.1-2201. Definitions.**

As used in this chapter, unless the context requires otherwise:

"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.

"Alternative fuel vehicle" means a vehicle equipped to be powered by a combustible gas, liquid, or other source of energy that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.

"Assessment" means a written determination by the Department of the amount of taxes owed by a taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department or is mailed to the taxpayer at the last known address appearing in the Commissioner's files.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.

"Aviation fuel" means aviation gasoline or aviation jet fuel.

"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Blender" means a person who produces blended fuel outside the terminal transfer system.

"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on international flights.

"Bonded importer" means a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in which (i) the state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive supplier.

"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

"Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle, watercraft, or aircraft.

"Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

"Commercial watercraft" means a watercraft employed in the business of commercial fishing,

- 1704 transporting persons or property for compensation or hire, or any other trade or business unless the  
 1705 watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation.  
 1706 The definition shall include a watercraft owned by a private business and used in the conduct of its own  
 1707 business or operations, including but not limited to the transport of persons or property.  
 1708 "Commissioner" means the Commissioner of the Department of Motor Vehicles.  
 1709 "Corporate or partnership officer" means an officer or director of a corporation, partner of a  
 1710 partnership, or member of a limited liability company, who as such officer, director, partner or member  
 1711 is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax  
 1712 collection, accounting, or remitting obligations.  
 1713 "Department" means the Department of Motor Vehicles, acting directly or through its duly authorized  
 1714 officers and agents.  
 1715 "Designated inspection site" means any state highway inspection station, weigh station, agricultural  
 1716 inspection station, mobile station, or other location designated by the Commissioner or his designee to  
 1717 be used as a fuel inspection site.  
 1718 "Destination state" means the state, territory, or foreign country to which motor fuel is directed for  
 1719 delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the  
 1720 purpose of resale or use. The term shall not include a tribal reservation of any recognized Native  
 1721 American tribe.  
 1722 "Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle  
 1723 or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include  
 1724 gasoline or aviation jet fuel.  
 1725 "Distributor" means a person who acquires motor fuel from a supplier or from another distributor for  
 1726 subsequent sale.  
 1727 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.  
 1728 § 4082.  
 1729 "Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii)  
 1730 elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in  
 1731 another state and has Virginia as its destination state.  
 1732 "Electric motor vehicle" means a motor vehicle that uses electricity as its only source of motive  
 1733 power.  
 1734 "End seller" means the person who sells fuel to the ultimate user of the fuel.  
 1735 "Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or  
 1736 foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller,  
 1737 and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.  
 1738 "Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another  
 1739 state, territory, or foreign country.  
 1740 "Fuel" includes motor fuel and alternative fuel.  
 1741 "Fuel alcohol" means methanol or fuel grade ethanol.  
 1742 "Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol  
 1743 outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a  
 1744 railroad tank car.  
 1745 "Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.  
 1746 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and  
 1747 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have  
 1748 an American Society for Testing Materials octane number of less than 75 as determined by the motor  
 1749 method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii)  
 1750 gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an  
 1751 aircraft engine.  
 1752 "Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the  
 1753 United States or its departments, agencies, and instrumentalities.  
 1754 "Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature,  
 1755 pressure, or other adjustments.  
 1756 "Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2  
 1757 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial  
 1758 processing purposes.  
 1759 "Highway" means every way or place of whatever nature open to the use of the public for purposes  
 1760 of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.  
 1761 "Highway vehicle" means a self-propelled vehicle designed for use on a highway.  
 1762 "Hybrid electric motor vehicle" means a motor vehicle that uses electricity and another source of  
 1763 motive power.  
 1764 "Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel

1765 supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the  
 1766 seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or  
 1767 for the purchaser constitutes an import by the purchaser.

1768 "Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel  
 1769 into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For  
 1770 purposes of this chapter, a motor fuel transporter shall not be considered an importer.

1771 "In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to  
 1772 collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal  
 1773 located in another state and has Virginia as its destination state or (ii) a supplier who does business only  
 1774 in Virginia.

1775 "Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et  
 1776 seq.) of this chapter or § 58.1-2244.

1777 "Liquid" means any substance that is liquid above its freezing point.

1778 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

1779 "Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a  
 1780 tank wagon, a transport truck, a railroad tank car, or a marine vessel.

1781 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of  
 1782 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

1783 "Occasional importer" means any person who (i) imports motor fuel by any means outside the  
 1784 terminal transfer system and (ii) is not required to be licensed as a bonded importer.

1785 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a  
 1786 supplier's license under this chapter.

1787 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;  
 1788 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in  
 1789 bankruptcy; club, society or other group or combination acting as a unit; or public body, including but  
 1790 not limited to the Commonwealth, any other state, and any agency, department, institution, political  
 1791 subdivision or instrumentality of the Commonwealth or any other state.

1792 "Position holder" means a person who holds an inventory position of motor fuel in a terminal, as  
 1793 reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel"  
 1794 when he has a contract with the terminal operator for the use of storage facilities and terminaling  
 1795 services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

1796 "Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors,  
 1797 and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or  
 1798 an individual.

1799 "Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to  
 1800 a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the  
 1801 person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells  
 1802 alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a  
 1803 fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports  
 1804 alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the  
 1805 engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

1806 "Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery,  
 1807 terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside  
 1808 the terminal transfer system.

1809 "Refiner" means any person who owns, operates, or otherwise controls a refinery.

1810 "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum  
 1811 products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel  
 1812 or at a rack.

1813 "Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical  
 1814 transfer to a transport truck or other means of conveyance outside the terminal transfer system is  
 1815 complete upon delivery into the means of conveyance.

1816 "Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at  
 1817 retail or dispenses the fuel at a retail location.

1818 "Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel  
 1819 and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

1820 "Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a  
 1821 two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive  
 1822 supplier.

1823 "System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel  
 1824 grade ethanol by transport truck or railroad tank car.

1825 "Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry

fuel and having a capacity of less than 6,000 gallons.

"Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

"Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

"Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part 48.4081-1.

"Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

"Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes of motor fuel over a highway.

"Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and receives tax payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other person pursuant to § 58.1-2252.

"Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator and (ii) is completed prior to removal of the product from the terminal by the receiving exchange partner.

"Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Protection Agency or Internal Revenue Service fuel-dyeing requirements.

"Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle, aircraft, or watercraft.

"Watercraft" means any vehicle used on waterways.

#### **§ 58.1-2217. Taxes levied; rate.**

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol until July 1, 2013. Beginning July 1, 2013, the tax rate shall be 3.5 percent of the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing average wholesale price of a gallon of self-serve unleaded regular gasoline the Commissioner shall use the period from December 1 through May 31 shall be the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline on February 20, 2013.

B. ~~(Contingent expiration date)~~ There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. Beginning July 1, 2013, the tax rate shall be six percent of the statewide average wholesale price of a gallon of self-serve diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.

In computing average wholesale price of a gallon of self-serve diesel fuel the Commissioner shall use the period from December 1 through May 31 shall be the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of self-serve diesel fuel on February 20, 2013.

B. ~~(Contingent effective date)~~ There is hereby levied a tax at the rate of sixteen cents per gallon on diesel fuel.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate of ~~seventeen and one-half cents per gallon levied on gasoline~~, along with any penalties and interest that may accrue.

E. ~~(Contingent expiration date)~~ There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons

of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~seventeen and one-half cents per gallon levied on diesel fuel~~, along with any penalties and interest that may accrue.

E. (Contingent effective date) There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of sixteen cents per gallon, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth. *The provisions of this chapter related to the administration, enforcement, penalties, and record keeping of the taxes imposed herein shall also apply to the collection of the storage tank fee.*

**§ 58.1-2230. When tax return and payment are due.**

A. A return for the tax on motor fuel and gasohol levied by this chapter shall be filed with the Commissioner and be in the form and contain the information required by the Commissioner. The return and the payment for the tax on motor fuel levied by this chapter shall be due for each full month in a calendar year. Any return and payment required under this section shall be deemed timely filed if received by the Commissioner by midnight of the twentieth day of the second month succeeding the month for which the return and payment are due. Each return shall report tax liabilities that accrue in the month for which the return is due.

B. Returns and payments shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return and payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery services.

C. The following shall file a monthly return as required by this section:

1. A refiner;
2. A terminal operator;
3. A supplier;
4. A distributor;
5. An importer to include a bonded importer;
6. A blender;
7. An aviation consumer;
8. An elective supplier; and
9. A fuel alcohol provider.

D. Notwithstanding the provisions of any other section in this chapter, the Commissioner may require all or certain licensees to file tax returns and payments electronically.

E. Persons incurring liability under § 58.1-2225 for the backup tax on motor fuel shall file a return together with a payment of tax due within 30 calendar days of incurring such liability.

F. *Any return and payment required under this section for purchases made on or after May 1, 2013, shall be deemed timely filed if received by the Commissioner by midnight of the 20th day of the sixth month succeeding the month for which the return and payment are due.*

G. *Beginning July 1, 2013, there shall be expedited refunds for the tax differential for product in inventory.*

**§ 58.1-2249. Tax on alternative fuel.**

A. (Contingent expiration date) There is hereby levied a tax at the rate of ~~seventeen and one-half cents per gallon levied on gasoline and gasohol~~ on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to ~~seventeen and one-half cents per gallon that levied on gasoline and gasohol~~ on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

A. (Contingent effective date) There is hereby levied a tax at the rate of sixteen cents per gallon on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to sixteen cents per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of \$50 \$100 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle, a hybrid electric motor vehicle, or an alternative fuel vehicle. However, no license tax shall be levied on any vehicle that is subject to the federal excise tax levied under § 4041 of the Internal Revenue Code or that is registered under the International Registration Plan. If such a highway vehicle is registered for a period other than one year as provided under § 46.2-646, the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered. *The revenues generated by this subsection shall be deposited in the Highway Maintenance and Operating Fund.*

**§ 58.1-2251. Liability for tax; filing returns; payment of tax.**

A. A bulk user of alternative fuel or retailer of alternative fuel who stores highway and nonhighway alternative fuel in the same storage tank shall be liable for the tax imposed by this article, and shall file tax returns and remit taxes in accordance with subsection D. The tax payable by a bulk user of alternative fuel or retailer of alternative fuel is imposed at the point that alternative fuel is withdrawn from the storage tank.

B. A provider of alternative fuel who sells or delivers alternative fuel shall be liable for the tax imposed by this article (i) on sales to a bulk user of alternative fuel or retailer of alternative fuel who stores highway product in a separate storage tank or (ii) if the alternative fuel is sold or used by the provider of alternative fuel for highway use.

C. The owner of a highway vehicle subject to an annual license tax pursuant to subsection B of § 58.1-2249 shall be liable for such annual license tax. The annual license tax shall be due ~~on or before~~ *the last day of December of each year when the highway vehicle is first registered in Virginia and upon each subsequent renewal of registration.*

D. 1. Each (i) bulk user of alternative fuel or retailer of alternative fuel liable for tax pursuant to subsection A and (ii) provider of alternative fuel liable for the tax pursuant to subsection B shall file a monthly tax return with the Department. The tax on alternative fuel levied by this article, except for the annual license tax imposed under subsection B of § 58.1-2249, that is required to be remitted to the Commonwealth shall be payable to the Commonwealth not later than the date on which the return is due. A return and payment shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return and payment are due. However, a monthly return of the tax for the month of May shall be (i) postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

2. If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

3. A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery service.

4. A return shall be filed with the Commissioner and shall be in the form and contain the information required by the Commissioner.

**§ 58.1-2259. Fuel uses eligible for refund of taxes paid for motor fuels.**

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;

2009 3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2  
2010 of § 58.1-2250 for its exclusive use in the operation of an aircraft;

2011 4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250  
2012 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such  
2013 an organization shall not be eligible for such refund;

2014 5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed  
2015 exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax  
2016 applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this  
2017 section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply  
2018 tank of a highway vehicle or an aircraft;

2019 6. Used by any person performing transportation under contract or lease with any transportation  
2020 district for use in a highway vehicle controlled by a transportation district created under the  
2021 Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the  
2022 transportation district by contract or lease, provided the refund shall be paid to the person performing  
2023 such transportation;

2024 7. Used by any private, nonprofit agency on aging, designated by the Department for Aging and  
2025 Rehabilitative Services, providing transportation services to citizens in highway vehicles owned, operated  
2026 or under contract with such agency;

2027 8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides  
2028 specialized transportation to various locations for elderly or disabled individuals to secure essential  
2029 services and to participate in community life according to the individual's interest and abilities;

2030 9. Used in operating or propelling buses owned and operated by a county or the school board thereof  
2031 while being used to transport children to and from public school or from school to and from educational  
2032 or athletic activities;

2033 10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being  
2034 used to transport children to and from such school or from such school to and from educational or  
2035 athletic activities;

2036 11. Used by any county or city school board or any private, nonprofit, nonreligious school  
2037 contracting with a private carrier to transport children to and from public schools or any private,  
2038 nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such  
2039 transportation;

2040 12. Used in operating or propelling the equipment of volunteer firefighting companies and of  
2041 volunteer rescue squads within the Commonwealth used actually and necessarily for firefighting and  
2042 rescue purposes;

2043 13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if  
2044 actually used in public activities;

2045 14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;

2046 15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose,  
2047 which is used on a job site and the movement of which on any highway is incidental to the purpose for  
2048 which it was designed and manufactured;

2049 16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with  
2050 tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but  
2051 excluding fuel lost through personal negligence or theft;

2052 17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

2053 18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment  
2054 used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or  
2055 lessee of such vehicles and not operated on or over any highway for any purpose other than to move it  
2056 in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the  
2057 taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner  
2058 into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

2059 19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to  
2060 the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be  
2061 paid by the Commissioner into the state treasury to be credited as provided in subsection D of  
2062 § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the  
2063 credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in  
2064 subsection D of § 58.1-2289. If any applicant who is an operator of commercial watercraft so requests,  
2065 the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement  
2066 Fund, the entire tax paid by such applicant for the purposes specified in § 28.2-208;

2067 20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if  
2068 the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to  
2069 propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while

fuel is being used from the auxiliary tank; or

21. Used in operating or propelling recreational and pleasure watercraft.

B. 1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate pursuant to § 46.2-2075 or 46.2-2099.4 providing regular route service over the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less \$0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. *Any person purchasing diesel fuel used in operating or propelling a passenger car, a pickup or panel truck, or a truck having a gross vehicle weight rating of 10,000 pounds or less fuel is entitled to a refund of a portion of taxes paid in an amount equal to a 2.5 percent tax rate on such fuel. For purposes of this subsection, "passenger car," "pickup or panel truck," and "truck" shall have the meaning given in § 46.2-100.*

F. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § 58.1-2233.

~~F.~~ G. Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

#### **§ 58.1-2289. (Contingent expiration date) Disposition of tax revenue generally.**

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. ~~Except as provided in § 33.1-23.03:1, no portion of the revenue derived from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or 58.1-2701, and remaining after authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the construction,~~

2131 reconstruction or maintenance of the roads and projects comprising the State Highway System, the  
 2132 Interstate System and the secondary system of state highways and expenditures directly and necessarily  
 2133 required for such purposes, including the retirement of revenue bonds.

2134 Revenues collected under this chapter may be also used for (i) contributions toward the construction,  
 2135 reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law  
 2136 and (ii) expenditures for the operation and maintenance of the Department of Transportation, the  
 2137 Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority,  
 2138 and the Department of Motor Vehicles as may be provided by law.

2139 The Governor is hereby authorized to transfer out of such fund an amount necessary for the  
 2140 inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection  
 2141 and analysis of gasoline for purity.

2142 ~~B. Except as provided in subsection F, the~~ The tax collected on each gallon of aviation fuel sold and  
 2143 delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state  
 2144 treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed  
 2145 upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the  
 2146 administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance  
 2147 and improvement of airports and landing fields to which the public now has or which it is proposed  
 2148 shall have access, and for the promotion of aviation in the interest of operators and the public generally.

2149 C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for  
 2150 gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and  
 2151 unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state  
 2152 treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds  
 2153 and defray the costs of the research and educational phases of the agricultural program, including  
 2154 supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University,  
 2155 the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research  
 2156 Station, including reasonable expenses of the Virginia Agricultural Council.

2157 D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial  
 2158 watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of  
 2159 the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the  
 2160 purposes provided generally in subsection C of § 29.1-701, including acquisition, construction,  
 2161 improvement and maintenance of public boating access areas on the public waters of this  
 2162 Commonwealth and for other activities and purposes of direct benefit and interest to the boating public  
 2163 and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial  
 2164 fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be  
 2165 used for the construction, repair, improvement and maintenance of the public docks of this  
 2166 Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction,  
 2167 improvement and maintenance of the public docks shall be made according to a plan developed by the  
 2168 Virginia Marine Resources Commission.

2169 From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for  
 2170 the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury  
 2171 for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the  
 2172 State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public  
 2173 docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters,  
 2174 (iii) make environmental improvements including, without limitation, fisheries management and habitat  
 2175 enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223,  
 2176 a sum as established by the General Assembly.

2177 E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected  
 2178 pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state  
 2179 treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount  
 2180 equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this  
 2181 chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less  
 2182 taxes collected for aviation fuels.

2183 F. The additional revenues, less any additional refunds authorized, generated by increases in the rates  
 2184 of taxes under this chapter pursuant to enactments of the 2007 Session of the General Assembly shall be  
 2185 collected pursuant to Article 4 of this chapter and deposited into the Highway Maintenance and  
 2186 Operating Fund.

2187 *E. Of the remaining revenues collected pursuant to this chapter less refunds authorized by this*  
 2188 *chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund, (ii) 15*  
 2189 *percent shall be deposited into the Transportation Trust Fund, (iii) four percent shall be deposited into*  
 2190 *the Priority Transportation Fund, and (iv) one percent shall be transferred to a special fund within the*  
 2191 *Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of*

the Department of Motor Vehicles.

**§ 58.1-2295. (Effective July 1, 2013) Levy; payment of tax.**

A. 1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is a member of (i) any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § 15.2-4502 or (ii) any transportation district that is subject to subsection C of § 15.2-4515 and that is contiguous to the Northern Virginia Transportation District.

2. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is embraced in the Hampton Roads Region, as defined in subsection B of § 33.1-23.5:3.

B. The tax shall be imposed at a rate of 2.1 percent of the sales price charged by a distributor for fuels sold to a retail dealer for retail sale in any such county or city. In any such sale to a retail dealer in which the distributor and the retail dealer are the same person, the sales price charged by the distributor shall be the cost price to the distributor of the fuel.

The tax levied under this section shall be imposed at the time of sale by the distributor to the retail dealer.

C. The tax imposed by this section shall be paid by the distributor, but the distributor shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter shall be maintained in the Commonwealth by any distributor who is not registered under § 58.1-2299.2 or is delinquent in the payment of taxes imposed under this chapter.

**§ 58.1-2299.20. (Effective July 1, 2013) Disposition of tax revenues.**

A. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A 1 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of ..... " The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § 15.2-4515, to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district which was established on or before January 1, 1986, and is also subject to subsection C of § 15.2-4515, the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction. The direct costs of administration shall be credited to the funds appropriated to the Department.

B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A 2 of § 58.1-2295, after subtraction of the direct costs of administration by the Department, shall be deposited in the Hampton Roads Transportation Fund established under § 33.1-23.5:3, and used solely for the purposes set forth therein. The direct cost of administration shall be credited to the funds appropriated to the Department.

**§ 58.1-2401. Definitions.**

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

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

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

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

"Motor vehicle" shall mean every vehicle, except for mobile office as herein defined, which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § 46.2-100 and every device in, upon and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices

2253 moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles,  
 2254 other than manufactured homes, used in this Commonwealth but not required to be licensed by the  
 2255 Commonwealth.

2256 "Sale" shall mean any transfer of ownership or possession, by exchange or barter, conditional or  
 2257 otherwise, in any manner or by any means whatsoever, of a motor vehicle. The term shall also include a  
 2258 transaction whereby possession is transferred but title is retained by the seller as security. The term shall  
 2259 not include a transfer of ownership or possession made to secure payment of an obligation, nor shall it  
 2260 include a refund for, or replacement of, a motor vehicle of equivalent or lesser value pursuant to the  
 2261 Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.). Where the replacement motor  
 2262 vehicle is of greater value than the motor vehicle replaced, only the difference in value shall constitute a  
 2263 sale.

2264 "Sale price" shall mean the total price paid for a motor vehicle and all attachments thereon and  
 2265 accessories thereto, as determined by the Commissioner, exclusive of any federal manufacturers' excise  
 2266 tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances. However, "sale  
 2267 price" shall not include (i) *any manufacturer rebate or incentive payment applied to the transaction by*  
 2268 *the customer or dealer whether as a reduction in the sales price or as payment for the vehicle and (ii)*  
 2269 *the cost of controls, lifts, automatic transmission, power steering, power brakes or any other equipment*  
 2270 *installed in or added to a motor vehicle which is required by law or regulation as a condition for*  
 2271 *operation of a motor vehicle by a handicapped person.*

2272 **§ 58.1-2402. Levy.**

2273 A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law,  
 2274 a tax upon the sale or use of motor vehicles in Virginia, other than a sale to or use by a person for  
 2275 rental as an established business or part of an established business or incidental or germane to such  
 2276 business.

2277 The amount of the tax to be collected shall be determined by the Commissioner by the application of  
 2278 the following rates against the gross sales price:

2279 1. Three percent *through midnight on June 30, 2013, four percent beginning July 1, 2013, through*  
 2280 *midnight on June 30, 2014, four and one-tenth of a percent beginning July 1, 2014, through midnight*  
 2281 *on June 30, 2015, four and two-tenths of a percent beginning July 1, 2015, through midnight on June*  
 2282 *30, 2016, and four and three-tenths of a percent beginning on and after July 1, 2016, of the sale price*  
 2283 *of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in*  
 2284 *§ 36-85.3, the tax shall be three percent of the sale price of each such manufactured home sold in the*  
 2285 *Commonwealth; if such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two*  
 2286 *percent of the sale price of each mobile office sold in the Commonwealth; if such vehicle has a gross*  
 2287 *vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a*  
 2288 *manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in § 58.1-2401, (iii) a trailer*  
 2289 *or semitrailer as severally defined in § 46.2-100 that is not designed or used to carry property, nor (iv) a*  
 2290 *vehicle registered under § 46.2-700, the tax shall be zero percent of the sale price of each such vehicle*  
 2291 *sold in the Commonwealth.*

2292 2. Three percent *through midnight on June 30, 2013, four percent beginning July 1, 2013, through*  
 2293 *midnight on June 30, 2014, four and one-tenth of a percent beginning July 1, 2014, through midnight*  
 2294 *on June 30, 2015, four and two-tenths of a percent beginning July 1, 2015, through midnight on June*  
 2295 *30, 2016, and four and three-tenths of a percent beginning on and after July 1, 2016, of the sale price*  
 2296 *of each motor vehicle, or three percent of the sale price of each manufactured home as defined in §*  
 2297 *36-85.3, or two percent of the sale price of each mobile office as defined in § 58.1-2401, not sold in*  
 2298 *Virginia but used or stored for use in the Commonwealth; or three percent of the sale price of each*  
 2299 *manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as*  
 2300 *defined in § 58.1-2401, not sold in Virginia but used or stored for use in this Commonwealth. If such*  
 2301 *vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more*  
 2302 *and is neither (i) a manufactured home as defined in § 36-85.3, (ii) a mobile office as defined in*  
 2303 *§ 58.1-2401, (iii) a trailer or semitrailer as severally defined in § 46.2-100 that is not designed or used to*  
 2304 *carry property, nor (iv) a vehicle registered under § 46.2-700, the tax shall be zero percent of the sale*  
 2305 *price of each such vehicle not sold in the Commonwealth but used or stored for use in the*  
 2306 *Commonwealth. When any motor vehicle or manufactured home not sold in the Commonwealth is first*  
 2307 *used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its*  
 2308 *current market value.*

2309 3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to  
 2310 taxation at a rate exceeding zero percent shall be \$35 \$75, except as provided by those exemptions  
 2311 defined in § 58.1-2403.

2312 4 through 7. [Repealed.]

2313 B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall

the same transaction be taxed more than once under either subdivision.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no longer owned or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then rented, in which case the tax imposed by § 58.1-1736 shall apply, subject to the exemptions provided in § 58.1-1737. Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of the Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to subdivision A 10 of § 46.2-1530, shall be subject to the tax.

**§ 58.1-2425. Disposition of revenues.**

A. Funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § 46.2-100, shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; ~~and~~ (ii) effective January 1, 1987, an amount equivalent to the net additional revenues from the sales and use tax on motor vehicles generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, 58.1-2401, 58.1-2402, and this section shall be distributed to and paid into the Transportation Trust Fund, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; *and* (iii) *the net additional revenues generated by increases in the rates of taxes under subdivisions A 1 and A 2 of § 58.1-2402 and generated by the increase in the minimum tax under subdivision A 3 of § 58.1-2402 pursuant to enactments of a Session of the General Assembly held in 2013 shall be deposited by the Comptroller into the Highway Maintenance and Operating Fund.*

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A ~~of this section~~, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

**§ 58.1-2701. Amount of tax.**

A. Except as provided in subsection B, every motor carrier shall pay a road tax ~~equivalent to \$0.21 per gallon equivalent to the cents per gallon credit as determined under subsection A of § 58.1-2706 for the relevant period plus an additional \$0.035 per gallon~~ calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of \$150 per year for each qualified highway vehicle regardless of whether such vehicle will be included on the motor carrier's IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway

Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

**§ 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.**

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax ~~equivalent to seventeen and one-half cents per gallon on all~~ *on every gallon of* motor fuel, diesel fuel and liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed. *The credit shall be at a cents per gallon rate equivalent to the tax imposed under subsection B of § 58.1-2217 for the relevant period as converted by the Commissioner to a cents per gallon tax for purposes of this credit.*

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

C. The Department may allow a refund upon receipt of proper application and review. It shall be at the discretion of the Department to determine whether an audit is required.

D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of not less than ~~ten~~ 10 days to the applicant and the Attorney General.

E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Construction Fund.

F. Whenever a person operating under lease to a motor carrier to perform transport services on behalf of the carrier purchases motor fuel, diesel fuel or liquefied gases relating to such services, such payments or purchases may, at the discretion of the Department, be considered payment or purchases by the carrier.

**§ 58.1-2708. Inspection of books and records.**

The Department and its authorized agents and representatives shall have the right at any reasonable time to inspect the books and records of any motor carrier subject to the tax imposed by this chapter *or to any tax collectible under the International Fuel Tax Agreement.*

**2. That §§ 58.1-2217 and 58.1-2259 of the Code of Virginia are amended and reenacted effective January 1, 2015, if the United States Congress has not enacted legislation granting the Commonwealth the authority to compel the remote sellers to collect state and local retail sales and use tax for sales made in the Commonwealth by such date, as follows:**

**§ 58.1-2217. Taxes levied; rate.**

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol *until July 1, 2013. Beginning January 1, 2015, the tax rate shall be 5.1 percent of the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.*

*In computing average wholesale price of a gallon of self-serve gasoline the Commissioner shall use the period from December 1 through May 31 shall be the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline on February 20, 2013.*

B. (Contingent expiration date) There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. *Beginning January 1, 2015, the tax rate shall be six percent of the statewide average wholesale price of a gallon of self-serve diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.*

*In computing average wholesale price of a gallon of self-serve diesel fuel the Commissioner shall use the period from December 1 through May 31 shall be the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of self-serve diesel fuel on February 20, 2013.*

B. (Contingent effective date) There is hereby levied a tax at the rate of sixteen cents per gallon on diesel fuel.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that

contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate of ~~seventeen and one-half cents per gallon levied on gasoline~~, along with any penalties and interest that may accrue.

E. ~~(Contingent expiration date)~~ There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~seventeen and one-half cents per gallon levied on diesel fuel~~, along with any penalties and interest that may accrue.

E. ~~(Contingent effective date)~~ There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of sixteen cents per gallon, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth. *The provisions of this chapter related to the administration, enforcement, penalties, and record keeping of the taxes imposed herein shall also apply to the collection of the storage tank fee.*

**§ 58.1-2259. Fuel uses eligible for rebate of a portion paid for motor fuels.**

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;
2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;
3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft;
4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;
5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;
6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;
7. Used by any private, nonprofit agency on aging, designated by the Department for Aging and Rehabilitative Services, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;
8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;
9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational

2497 or athletic activities;

2498 10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being  
2499 used to transport children to and from such school or from such school to and from educational or  
2500 athletic activities;

2501 11. Used by any county or city school board or any private, nonprofit, nonreligious school  
2502 contracting with a private carrier to transport children to and from public schools or any private,  
2503 nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such  
2504 transportation;

2505 12. Used in operating or propelling the equipment of volunteer firefighting companies and of  
2506 volunteer rescue squads within the Commonwealth used actually and necessarily for firefighting and  
2507 rescue purposes;

2508 13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if  
2509 actually used in public activities;

2510 14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;

2511 15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose,  
2512 which is used on a job site and the movement of which on any highway is incidental to the purpose for  
2513 which it was designed and manufactured;

2514 16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with  
2515 tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but  
2516 excluding fuel lost through personal negligence or theft;

2517 17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

2518 18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment  
2519 used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or  
2520 lessee of such vehicles and not operated on or over any highway for any purpose other than to move it  
2521 in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the  
2522 taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner  
2523 into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

2524 19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to  
2525 the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be  
2526 paid by the Commissioner into the state treasury to be credited as provided in subsection D of  
2527 § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the  
2528 credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in  
2529 subsection D of § 58.1-2289. If any applicant who is an operator of commercial watercraft so requests,  
2530 the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement  
2531 Fund, the entire tax paid by such applicant for the purposes specified in § 28.2-208;

2532 20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if  
2533 the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to  
2534 propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while  
2535 fuel is being used from the auxiliary tank; or

2536 21. Used in operating or propelling recreational and pleasure watercraft.

2537 B. 1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete  
2538 highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or  
2539 hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in  
2540 an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed  
2541 delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or  
2542 air feed discharge systems for off-road deliveries of animal feed.

2543 2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely  
2544 and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer,  
2545 where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine  
2546 that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such  
2547 fuel.

2548 C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may  
2549 apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an  
2550 urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of  
2551 passengers which has been issued a certificate pursuant to § 46.2-2075 or 46.2-2099.4 providing regular  
2552 route service over the highways of the Commonwealth. No refund shall be granted unless the majority  
2553 of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel  
2554 of a distance of not more than 40 miles, one way, in a single day between their place of abode and their  
2555 place of employment, shopping areas or schools.

2556 If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to  
2557 engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee

arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less \$0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. *Any person purchasing diesel fuel used in operating or propelling a passenger car, a pickup or panel truck, or a truck having a gross vehicle weight rating of 10,000 pounds or less fuel is entitled to a refund of a portion of taxes paid in an amount equal to a 0.9 percent tax rate on such fuel. For purposes of this subsection, "passenger car," "pickup or panel truck," and "truck" shall have the meaning given in § 46.2-100.*

F. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § 58.1-2233.

G. Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

**3. That if the United States Congress has not enacted legislation granting the Commonwealth the authority to compel the remote sellers to collect state and local retail sales and use tax for sales made in the Commonwealth by such date, the amount of general funds transferred to the Highway Maintenance and Operating Fund shall not be increased after fiscal year 2015.**

**4. That Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of Virginia, §§ 58.1-609.13, 58.1-2289, as it may become effective, and 58.1-2701, as it may become effective, of the Code of Virginia and the second enactment of Chapter 822 of the Acts of Assembly of 2009, as amended by Chapter 535 of the Acts of Assembly of 2012, are repealed.**

**5. That in computing the amount of sales and use tax revenue paid under subsections G, H, and I of § 58.1-638 as added by this act and § 58.1-638.3 as added by this act, the amount of such revenue attributable to sales and use tax on food for human consumption, as defined in § 58.1-611.1 of the Code of Virginia, shall be excluded.**

**6. That \$100 million of the increased revenues provided to the Highway Maintenance and Operating Fund pursuant to this act in fiscal years 2014, 2015, and 2016 shall be dedicated to Phase 2 of the Dulles Corridor Metrorail Extension Project, provided, however, that the Metropolitan Washington Airports Authority (MWAA) Board of Directors first address all recommendations cited in the Office of the Inspector General of the U.S. Department of Transportation's Report on MWAA Governance and the accountability officer appointed by the U.S. Secretary of Transportation determines that such recommendations have been addressed.**

**7. That the provisions of this act relating to the authority to compel remote sellers to collect the Commonwealth's sales and use tax on sales made in the Commonwealth shall not become effective unless (i) the federal government enacts legislation "the federal act" that grants states that meet minimum simplification requirements specified in the federal act the authority to compel remote retailers to collect sales and use tax on sales made into the Commonwealth and (ii) the Tax Commissioner publishes notice in the Virginia Register of Regulations that declares that conformity to the federal act is cost effective, generates additional sales and use tax revenues for the Commonwealth of not less than \$250 million annually, is not in conflict with the Constitution of Virginia, and is otherwise advantageous to the Commonwealth, and adheres to all notice requirements set forth in the federal act. Before publishing such public notice, the Tax Commissioner shall consult with the Governor to determine whether conformity to any provision of the federal act is not advantageous to the Commonwealth.**

**8. That the Northern Virginia Transportation Authority and the counties and cities embraced by**

2619 the Authority shall work cooperatively with towns with a population greater than 3,500 located  
2620 within such counties for purposes of implementing the provisions of this act.

2621 9. That the Texas Transportation Institute's annual report on highway congestion ranks the  
2622 Northern Virginia/Washington, D.C. area as the worst area for traffic congestion in the nation,  
2623 and the Hampton Roads region as the twentieth most congested area of the 101 area studied.  
2624 Therefore, the General Assembly finds that transportation construction and maintenance in  
2625 Northern Virginia and Hampton Roads are high priorities.

2626 10. That each county or city embraced by the Northern Virginia Transportation Authority shall  
2627 expend or disburse for transportation purposes an amount that is at least equal to the total  
2628 amount expended or disbursed for transportation purposes by the county or city in its fiscal year  
2629 that began on July 1, 2012. Each county or city embraced in the Hampton Roads Region, as  
2630 described in subsection B of § 33.1-23.5:3, shall expend or disburse for transportation purposes an  
2631 amount that is at least equal to the total amount expended or disbursed for transportation  
2632 purposes by the county or city in its fiscal year that began on July 1, 2007.

2633 11. That no tolls shall be imposed or collected on Interstate 95 south of Fredericksburg pursuant  
2634 to the Interstate System Reconstruction and Rehabilitation Pilot Program without the prior  
2635 approval of the General Assembly.

2636 12. That Chapter 896 of the Acts of Assembly of 2007 is amended by adding a twenty-fourth  
2637 enactment as follows:

2638 24. That the provisions of the twenty-second enactment of this act shall not apply to any  
2639 revenues generated pursuant to subsections B and E of § 58.1-2217, subsection A of § 58.1-2249, or  
2640 § 58.1-2289 or 58.1-2701 of the Code of Virginia.

2641 13. Beginning in fiscal year 2020, \$20 million from the Highway Maintenance and Operating Fund  
2642 shall be deposited into the Route 58 Corridor Development Fund.

2643 14. That the provisions of this act that generate additional revenue through state taxes or fees  
2644 imposed only in Northern Virginia and in the Hampton Roads area shall expire on December 31  
2645 of any year in which the General Assembly, any locality, or any Authority appropriates any of  
2646 such revenues for any non-transportation-related purpose or for any project outside the  
2647 geographic boundaries provided in this act.

2648 15. That if the conditions of the seventh enactment clause of this act are met after January 1,  
2649 2015, then the provisions of §§ 58.1-2217 and 58.1-2259 shall revert to the provisions of those  
2650 statutes as set forth in the first enactment on the January 1 immediately following the calendar  
2651 year in which such conditions are met.

2652 16. That should any portion of this act be held unconstitutional by a court of competent  
2653 jurisdiction, the remaining portions of this act shall remain in effect.