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## HOUSE BILL NO. 2313

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Albo  
on February 4, 2013)

(Patron Prior to Substitute—Delegate Howell, W.J.)

A *BILL to amend and reenact §§ 58.1-416, 58.1-540, 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, 58.1-609.1, 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, 58.1-639, 58.1-2201, 58.1-2217, 58.1-2249, 58.1-2261, 58.1-2289, as it may become effective, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 15.2-4217.2 and 58.1-604.7, by adding in Title 58.1 a chapter numbered 8.1, consisting of a section numbered 58.1-818, and by adding a section numbered 58.1-2259.1; and to repeal § 58.1-611.1, relating to adjusting the sources of transportation funding by eliminating the tax on all motor fuels except diesel fuel and blended diesel fuel, increasing the amount of current sales and use tax revenue dedicated to the Transportation Trust Fund, and increasing the sales and use tax rate.*

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

1. That §§ 58.1-416, 58.1-540, 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, 58.1-609.1, 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, 58.1-639, 58.1-2201, 58.1-2217, 58.1-2249, 58.1-2261, 58.1-2289, as it may become effective, 58.1-2701, as it is currently effective and as it may become effective, and 58.1-2706 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-4217.2 and 58.1-604.7, by adding in Title 58.1 a chapter numbered 8.1, consisting of a section numbered 58.1-818, and by adding a section numbered 58.1-2259.1 as follows:

**§ 15.2-4217.2. Transportation Fund for certain planning district commissions authorized.**

A. The planning district commission for Northern Virginia, or for Hampton Roads may create a transportation fund to be used to fund transportation projects located within the boundaries of the planning district, with such projects to be chosen based upon the criteria set forth in this section. The fund shall be created in the state treasury and shall be a special nonreverting fund to be known as the Transportation Fund of the [fill in the name] Planning District Commission, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues authorized by the General Assembly 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. Moneys in the Fund shall be used solely for the purposes of transportation projects that improve mobility and safety within the boundaries of the planning district for which the Fund is established. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the director or chief executive of the planning district commission.

B. A planning district commission shall be entitled to revenues generated in the localities located within the planning district pursuant to § 58.1-604.7 and Chapter 8.1 (§ 58.1-818) of Title 58.1, and such funds shall be distributed to the Fund established by a planning district commission pursuant to this section, but only if the General Assembly, in the regular session immediately following the satisfaction of the requirements set forth in this section, specifically authorizes the imposition of the taxes set forth in § 58.1-604.7 and in Chapter 8.1 (§ 58.1-818) of Title 58.1 in the localities located within the planning district.

C. In order to be eligible to receive the revenues set forth in subsection B, a planning district commission, or a transportation planning entity of the planning district commission, shall compile a list, in order of priority, of the top 10 transportation-related projects within the planning district for which the transportation fund may be used. If applicable, the criteria and methodology set forth in § 33.1-13.03:1 shall be followed. If not applicable, criteria and methodology similar to that set forth in § 33.1-13.03:1 shall be utilized in compiling and prioritizing such list. However, priority shall be given to those transportation projects that result in the most reduction of highway congestion. The list shall be updated at least once every four years for as long as the Fund receives the revenues set forth in subsection B.

D. In order to be eligible to receive the revenues set forth in subsection B, the governing bodies of localities located within the planning district that represent at least a majority of the population residing within the planning district shall adopt a resolution supporting the funding of the transportation projects

determined pursuant to subsection C through the imposition of the sales and use tax set forth in § 58.1-604.7 and the recordation tax set forth in Chapter 8.1 (§ 58.1-818) of Title 58.1. Such resolution shall only be voted upon by the governing body of a locality after the locality holds at least one public hearing concerning the imposition of the taxes within the locality.

E. No expenditures from or other use of moneys in a fund created pursuant to this section 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.

**§ 58.1-416. When certain other sales deemed in the Commonwealth.**

Sales, other than sales of tangible personal property, are in the Commonwealth if:

1. The income-producing activity is performed in the Commonwealth; or

2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance the taxpayer has exploited the market provided by the Commonwealth to the extent that any benefit or use of such sale is to a person or location in the Commonwealth.

The Department shall develop and publish guidelines implementing the provisions of this section. The guidelines shall contain provisions that (i) assert to the maximum extent permitted by law Virginia's authority to calculate and impose its income tax with respect to the sale of services, the benefits of which are received in Virginia; the sale of marketable securities when the customer is in Virginia; and the sale, lease, rental, or licensing of real, personal, or intangible property when such property, other than property subject to § 58.1-415, is located in or used in Virginia; (ii) address the extent, if any, to which sourcing may be based upon estimates when necessary information is not in the possession of the taxpayer; and (iii) address the manner in which abuse of the sourcing rules may be remedied, which remedies may include reliance on the location of income-producing activity and direct costs of performance under the law and regulations as they existed for taxable years beginning prior to January 1, 2014. The development and publication of the guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 58.1-540. Levy of the tax.**

A. The Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, Norfolk, and Virginia Beach hereby authorized to levy a local income tax at any increment of one-quarter percent up to a maximum rate of one percent upon the Virginia taxable income as determined in § 58.1-322 for an individual, § 58.1-361 for a fiduciary of an estate or trust, or § 58.1-402 for a corporation, for each taxable year of every resident of such county or city or corporation having income from sources within such county or city, subject to the limitations of subsection B of this section. The same rate shall apply to individuals, fiduciaries and corporations.

B. The authority to levy a local income tax as provided in subsection A may be exercised by a county or city governing body only if approved in a referendum within the county or city. The referendum shall be held in accordance with § 24.2-684. The referendum may be initiated either by a resolution of the governing body of the county or city or on the filing of a petition signed by a number of registered voters of the county or city equal in number to ten percent of the number of voters registered in the county or city on January 1 of the year in which the petition is filed with the circuit court of such county or city. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county or city once a week for three consecutive weeks prior to the election. The ballot used shall be printed to read as follows:

"Shall the governing body of (... name of county or city ...) have the authority to levy a local income tax of up to one percent for transportation purposes in accordance with § 58.1-540 of the Code of Virginia?"

☐ Yes

☐ No

If the voters by a majority vote approve the authority of the local governing body to levy a local income tax, the tax may be imposed by the adoption of an ordinance by the governing body of the county or city in accordance with general or special law, and the tax may be thereafter enacted, modified or repealed as any other tax the governing body is empowered to levy subject only to the limitations herein. No ordinance levying a local income tax shall be repealed unless and until all debts or other obligations of the county or city to which such revenues are pledged or otherwise committed have been paid or provision made for payment.

C. Notwithstanding the provisions of subsection A, no locality may levy a local income tax pursuant to this article if the locality is located in a planning district (i) that has met the requirements of § 15.2-4217.2 and (ii) in which the General Assembly has explicitly authorized the imposition of the taxes set forth in § 58.1-604.7 and Chapter 8.1 (§ 58.1-818).

**§ 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, *or any sales and use tax imposed under § 58.1-604.7.*

"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.

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

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

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

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

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

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

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

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

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

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

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

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

240 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,  
241 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,  
242 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body  
243 politic or political subdivision, whether public or private, or quasi-public, and the plural of such term  
244 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% 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

306 articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the  
307 new or used articles and the credit for the used articles.

308 "Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring,  
309 lighting, equipment, and all other property used to reduce contamination or to control airflow,  
310 temperature, humidity, vibration, or other environmental conditions required for the integrated process of  
311 semiconductor manufacturing.

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

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

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

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

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

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

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

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

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

354 **§ 58.1-603. Imposition of sales tax.**

355 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now  
356 imposed by law, a license or privilege tax upon every person who engages in the business of selling at  
357 retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of  
358 the things or services taxable under this chapter, or who stores for use or consumption in this  
359 Commonwealth any item or article of tangible personal property as defined in this chapter, or who  
360 leases or rents such property within this Commonwealth, in the amount of ~~three and one-half percent~~  
361 ~~through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004~~ 4.5 percent:

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

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

367 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 are expressly stated as taxable within this chapter.

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

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in 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~~ *4.5 percent*:

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

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

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

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

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

**§ 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~~ *4.5 percent* on all tangible personal property except motor vehicles, which shall be taxed at the rate of three percent; 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 that~~ is self-propelled and designed primarily for use upon the highways, any vehicle ~~which that~~ is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways ~~which that~~ 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.

429 **§ 58.1-604.7. One-half percent sales and use tax in certain planning districts.**

430 A. In addition to the sales tax imposed pursuant to § 58.1-603, a tax of one-half of one percent is  
431 hereby levied and imposed on the property, activities, and services described in § 58.1-603 in the  
432 localities located within a planning district that has met the requirements of § 15.2-4217.2, and that  
433 have been specifically authorized by the General Assembly to have the revenues generated by such tax  
434 collected and deposited into the transportation fund established by the planning district commission  
435 pursuant to § 15.2-4217.2.

436 B. In addition to the use tax imposed pursuant to § 58.1-604, a tax of one-half of one percent is  
437 hereby levied and imposed on the property, activities, and services described in § 58.1-604 in the  
438 localities located within a planning district that has met the requirements of § 15.2-4217.2, and that  
439 have been specifically authorized by the General Assembly to have the revenues generated by such tax  
440 collected and deposited into the transportation fund established by the planning district commission  
441 pursuant to § 15.2-4217.2. Such tax shall not be levied upon food purchased for human consumption  
442 pursuant to § 58.1-611.1.

443 C. The taxes under this section shall be effective in the localities located in the planning district for  
444 the tax year beginning on January 1 immediately following the session of the General Assembly in  
445 which approval was explicitly provided for the collection of the tax for the planning district. No tax  
446 shall be imposed or collected pursuant to this section unless, during the same session, the General  
447 Assembly also authorizes the collection of the tax set forth in Chapter 8.1 (§ 58.1-818) in the localities  
448 located within the planning district.

449 D. The taxes under this section shall be subject to all the provisions of this chapter and the rules  
450 and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on any  
451 tax provided under this section.

452 E. Notwithstanding the provisions of § 58.1-638, all taxes paid to the Commissioner pursuant to this  
453 section, less the applicable portion of any refunds to the taxpayers, shall be deposited in the special  
454 fund titled the "Transportation Fund of the [fill in the name] Planning District Commission." The  
455 moneys deposited in the special fund shall be distributed monthly to the applicable planning district  
456 commission to be used in accordance with the provisions of § 15.2-4217.2. No expenditures from or  
457 other use of moneys in the special fund shall be considered in allocating highway maintenance and  
458 construction funds under § 33.1-23.1 or apportioning Transportation Trust Fund funds under § 58.1-638  
459 but shall be in addition thereto.

460 **§ 58.1-605. To what extent and under what conditions cities and counties may levy local sales**  
461 **taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled**  
462 **thereto.**

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

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

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

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

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

484 ~~E.~~ F. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid  
485 into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books  
486 under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the  
487 account of each particular city or county levying a local sales tax under this section. The basis of such  
488 credit shall be the city or county in which the sales were made as shown by the records of the  
489 Department and certified by it monthly to the Comptroller, namely, the city or county of location of  
490 each place of business of every dealer paying the tax to the Commonwealth without regard to the city or



county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

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

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

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

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

~~J.~~ *K.* It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection ~~G~~ <sup>above</sup> *H* ~~of this section~~ <sup>or I</sup> 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

552 rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter,  
553 and all amendments thereof, and the rules and regulations published with respect thereto, except that no  
554 discount under § 58.1-622 shall be allowed on a local use tax.

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

557 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local  
558 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority  
559 of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this  
560 section, and providing that the local use tax shall become effective on the first day of a month at least  
561 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to  
562 the Tax Commissioner so that it will be received within five days after its adoption. The resolution  
563 authorized by this ~~paragraph~~ *subdivision* may be adopted in the manner stated notwithstanding any other  
564 provision of law, including any charter provision.

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

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

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

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

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

595 G. Local use tax revenue shall be distributed among the cities and counties for which it is  
596 collected, respectively, as shown by the records of the Department, and the procedure shall be the same  
597 as that prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue  
598 that is not accurately assignable to a particular city or county shall be distributed monthly by the  
599 appropriate state authorities among the cities and counties in this Commonwealth imposing the local use  
600 tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales  
601 and use tax was in effect in the taxable month involved, as shown by the records of the Department,  
602 and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax  
603 revenue distributed among such cities and counties, respectively, in the month of distribution.  
604 Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform  
605 method to distribute local use tax. Any significant changes to the method of local use tax distribution  
606 shall be phased in over a five-year period. Distribution information shall be shared with the affected  
607 localities prior to implementation of the changes.

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

610 **§ 58.1-608.3. Entitlement to certain sales tax revenues.**

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

613 "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 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 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, *or (iii) the one-half percent sales and use tax generated pursuant to § 58.1-604.7.* For a public facility that is a sports facility, "sales tax revenues" ~~shall include~~ *includes* 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)

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

689 C. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1,  
690 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but  
691 before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, (v) on or after July 1, 2001,  
692 but before July 1, 2005, (vi) on or after July 1, 2004, but before July 1, 2007, (vii) on or after July 1,  
693 2009, but before July 1, 2012, or (viii) on or after January 1, 2011, but prior to July 1, 2015, to pay the  
694 cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by  
695 transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such  
696 bonds, which entitlement shall not exceed 35 years, and all such sales tax revenues shall be applied to  
697 repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality  
698 on a quarterly basis, subject to such reasonable processing delays as may be required by the Department  
699 of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State  
700 Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding  
701 any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No  
702 such remittances shall be made until construction is completed and, in the case of a renovation or  
703 expansion, until the governing body of the municipality has certified that the renovation or expansion is  
704 completed.

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

710 **§ 58.1-609.1. Governmental and commodities exemptions.**

711 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606  
712 shall not apply to the following:

713 1. Fuels which are subject to the tax imposed by Chapter 22 (§ 58.1-2200 et seq.). Persons who are  
714 refunded any such fuel tax shall, however, be subject to the tax imposed by this chapter, unless such  
715 taxes would be specifically exempted pursuant to any provision of this section.

716 2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

717 3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

718 4. Tangible personal property for use or consumption by the Commonwealth, any political  
719 subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and  
720 leases to privately owned financial and other privately owned corporations chartered by the United  
721 States. Further, this exemption shall not apply to tangible personal property which is acquired by the  
722 Commonwealth or any of its political subdivisions and then transferred to private businesses for their  
723 use in a facility or real property improvement to be used by a private entity or for nongovernmental  
724 purposes other than tangible personal property acquired by the Herbert H. Bateman Advanced  
725 Shipbuilding and Carrier Integration Center and transferred to a Qualified Shipbuilder as defined in the  
726 third enactment of Chapter 790 of the 1998 Acts of the General Assembly.

727 5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.).

728 6. Motor fuels and alternative fuels for use in a commercial watercraft, as defined in § 58.1-2201,  
729 upon which a fuel tax is refunded pursuant to § 58.1-2259.

730 7. Sales by a government agency of the official flags of the United States, the Commonwealth of  
731 Virginia, or of any county, city or town.

732 8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.

733 9. Watercraft as defined in § 58.1-1401.

734 10. Tangible personal property used in and about a marine terminal under the supervision of the  
735 Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall  
736 apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the

Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46.

12. Tangible personal property for use or consumption by the Virginia Department for the Blind and Vision Impaired or any nominee, as defined in § 51.5-60, of such Department.

13. [Expired.]

14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Department of Veterans Services.

15. Tangible personal property for use or consumption by any nonprofit organization whose members include the Commonwealth and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government.

16. Tangible personal property purchased for use or consumption by any soil and conservation district which is organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1.

17. Tangible personal property sold or leased to Alexandria Transit Company, Greater Lynchburg Transit Company, GRTC Transit System, or Greater Roanoke Transit Company, or to any other transit company that is owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services, and/or tangible personal property sold or leased to any county, city, or town, or any combination thereof, that is transferred to any of the companies set forth in this subdivision owned, operated, or controlled by any county, city, or town, or any combination thereof, that provides public transportation services.

18. (Effective until July 1, 2017) Qualified products designated as Energy Star or WaterSense with a sales price of \$2,500 or less per product purchased for noncommercial home or personal use. The exemption provided by this subdivision shall apply only to sales occurring during the four-day period that begins each year on the Friday before the second Monday in October and ends at midnight on the second Monday in October.

For the purposes of this exemption, an Energy Star qualified product is any dishwasher, clothes washer, air conditioner, ceiling fan, compact fluorescent light bulb, dehumidifier, programmable thermostat, or refrigerator, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program. For the purposes of this exemption, WaterSense qualified products are those that have been recognized as being water efficient by the WaterSense program sponsored by the U.S. Environmental Protection Agency as indicated by a WaterSense label.

19. *Food purchased for human consumption.* As used in this subdivision, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it does not include seeds and plants that produce food for human consumption. For the purposes of this subdivision, "food purchased for human consumption" does not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For the purposes of this subdivision, "retail establishment" means each place of business for which any dealer, as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

**§ 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 in this section, 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~~ includes 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

849 E. In addition to the jurisdictional standards contained in subsection C ~~of this section~~, nothing  
850 contained ~~herein~~ *( in this section other than in subsection D)* shall limit any authority which this  
851 Commonwealth may enjoy under the provisions of federal law or an opinion of the United States  
852 Supreme Court to require the collection of sales and use taxes by any dealer who regularly or  
853 systematically solicits sales within this Commonwealth. Furthermore, nothing contained in subsection C  
854 shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher ~~which~~  
855 ~~that~~ broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth  
856 ~~which~~ *that* is intended to be disseminated primarily to consumers located in this Commonwealth to  
857 report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster,  
858 printer, outdoor advertising firm, advertising distributor, or publisher accepted such advertising contracts  
859 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 in this section, 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~~ *includes* 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 (~~ *in this section* other than *in 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 that~~ broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth ~~which that~~ 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,~~ *5.5 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 (*\$0.10*) 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*

1044 *Department of Taxation pursuant to subsection B of § 58.1-601.*

1045 *F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for*  
1046 *the Commonwealth.*

1047 Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period  
1048 of time set forth in §§ 58.1-611.2 and 58.1-611.3 or subdivision 18 of § 58.1-609.1 not to collect the tax  
1049 levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the  
1050 purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for  
1051 payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected from a  
1052 purchaser pursuant to this section.

1053 **§ 58.1-625. (Effective July 1, 2017) Collection of tax.**

1054 A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the  
1055 amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt  
1056 from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the  
1057 same manner as other debts. No action at law or suit in equity under this chapter may be maintained in  
1058 this Commonwealth by any dealer who is not registered under § 58.1-613 or is delinquent in the  
1059 payment of the taxes imposed under this chapter.

1060 B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under  
1061 the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such  
1062 tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as  
1063 herein provided.

1064 C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter  
1065 shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can  
1066 affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

1067 D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution,  
1068 lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for  
1069 and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this  
1070 Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid.  
1071 Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by  
1072 himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

1073 E. *Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who*  
1074 *has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional*  
1075 *amount, including any penalty or interest, if collection of the improper amount is a result of the remote*  
1076 *seller, single provider, or consolidated provider's reasonable reliance upon information provided by the*  
1077 *Commonwealth, including, but not limited to, any information obtained from software provided by the*  
1078 *Department of Taxation pursuant to subsection B of § 58.1-601.*

1079 F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for  
1080 the Commonwealth.

1081 Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period  
1082 of time set forth in § 58.1-611.2 not to collect the tax levied by this chapter or levied under the  
1083 authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax himself. A  
1084 dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner  
1085 in the same manner as he is for tax collected from a purchaser pursuant to this section.

1086 **§ 58.1-635. Failure to file return; fraudulent return; civil penalties.**

1087 A. When any dealer fails to make any return and pay the full amount of the tax required by this  
1088 chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be  
1089 added to the tax in the amount of six percent if the failure is for not more than one month, with an  
1090 additional six percent for each additional month, or fraction thereof, during which the failure continues,  
1091 not to exceed ~~thirty~~ 30 percent in the aggregate. In no case, however, shall the penalty be less than ~~ten~~  
1092 ~~dollars~~ \$10 and such minimum penalty shall apply whether or not any tax is due for the period for  
1093 which such return was required. If such failure is due to providential or other good cause shown to the  
1094 satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive  
1095 of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the  
1096 Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with  
1097 the intent to defraud the Commonwealth of any such tax, a specific penalty of ~~fifty~~ 50 percent of the  
1098 amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be  
1099 payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a  
1100 part of the tax imposed.

1101 B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this  
1102 chapter when any dealer reports his gross sales, gross proceeds or cost price, as the case may be, at ~~fifty~~  
1103 50 percent or less of the actual amount.

1104 C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same  
1105 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.*

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

A. To the extent of the ~~one-half~~ 0.5 percent increase in the state sales and use tax rate effective ~~August 1, 2004~~ January 1, 2016, 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, 2016. 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, 2016, 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.

**CHAPTER 8.1.**

**ADDITIONAL GRANTOR'S RECORDATION TAX.**

**§ 58.1-818. Additional recordation tax.**

A. In addition to the state recordation tax imposed by Chapter 8 (§ 58.1-800 et seq.), a tax is hereby imposed, at a rate of 15 cents (\$0.15) on every \$100 or fraction thereof, upon the first recordation of each taxable instrument in the localities located within a planning district that has met the requirements of § 15.2-4217.2, and that have been specifically authorized by the General Assembly to have the revenues generated by such tax collected and deposited into the transportation fund established by the planning district commission pursuant to § 15.2-4217.2.

The taxes under this section shall be effective in the localities located in the planning district for the tax year beginning on January 1 immediately following the session of the General Assembly in which approval was explicitly provided for the collection of the tax for the planning district. No tax shall be imposed or collected pursuant to this section unless, during the same session, the General Assembly also authorizes the collection of the tax set forth in § 58.1-604.7 in the localities located within the planning district.

B. The taxes under this section shall be on each deed, instrument, or writing by which lands, tenements, or other realty located in the applicable city or county 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 equals or exceeds \$100, shall be 15 cents (\$0.15) 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 tax 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 without certification of the clerk of the court wherein first recorded having been affixed thereto that the fee imposed by this section has been paid. The clerk shall include within the certificate the amount of such fee collected thereon.

C. All taxes paid to the Commissioner pursuant to this section shall be deposited in the special fund titled the "Transportation Fund of the [fill in the name] Planning District Commission." The moneys deposited in the special fund shall be distributed monthly to the applicable planning district commission to be used in accordance with § 15.2-4217.2. No expenditures from or other uses of the moneys in the special 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.

D. Fees imposed by this section shall be collected pursuant to subsection B of § 58.1-802.

1167 *E. Except as otherwise provided in this section, the provisions of Chapter 8 (§ 58.1-800 et seq.) shall*  
1168 *apply to this chapter, mutatis mutandis.*

1169 **§ 58.1-2201. Definitions.**

1170 As used in this chapter, unless the context requires otherwise:

1171 "Alternative fuel" means a combustible gas, liquid or other energy source that can be used to  
1172 generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to  
1173 recharge an electric motor vehicle.

1174 "Assessment" means a written determination by the Department of the amount of taxes owed by a  
1175 taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of  
1176 assessment is delivered to the taxpayer by the Department or is mailed to the taxpayer at the last known  
1177 address appearing in the Commissioner's files.

1178 "Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in  
1179 any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.

1180 "Aviation fuel" means aviation gasoline or aviation jet fuel.

1181 "Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft,  
1182 and sold or used for that purpose.

1183 "Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold  
1184 or used for that purpose.

1185 "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a  
1186 de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as  
1187 a fuel in a highway vehicle.

1188 "Blender" means a person who produces blended fuel outside the terminal transfer system.

1189 "Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States  
1190 Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on  
1191 international flights.

1192 "Bonded importer" means a person, other than a supplier, who imports, by transport truck or another  
1193 means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in  
1194 another state in which (i) the state from which the fuel is imported does not require the seller of the fuel  
1195 to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii)  
1196 the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive  
1197 supplier.

1198 "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from  
1199 which motor fuel may be removed at a rack.

1200 "Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the  
1201 stored fuel to operate a highway vehicle, watercraft, or aircraft.

1202 "Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel  
1203 and uses part or all of the stored fuel to operate a highway vehicle.

1204 "Commercial watercraft" means a watercraft employed in the business of commercial fishing,  
1205 transporting persons or property for compensation or hire, or any other trade or business unless the  
1206 watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation.  
1207 The definition shall include a watercraft owned by a private business and used in the conduct of its own  
1208 business or operations, including but not limited to the transport of persons or property.

1209 "Commissioner" means the Commissioner of the Department of Motor Vehicles.

1210 "Corporate or partnership officer" means an officer or director of a corporation, partner of a  
1211 partnership, or member of a limited liability company, who as such officer, director, partner or member  
1212 is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax  
1213 collection, accounting, or remitting obligations.

1214 "Department" means the Department of Motor Vehicles, acting directly or through its duly authorized  
1215 officers and agents.

1216 "Designated inspection site" means any state highway inspection station, weigh station, agricultural  
1217 inspection station, mobile station, or other location designated by the Commissioner or his designee to  
1218 be used as a fuel inspection site.

1219 "Destination state" means the state, territory, or foreign country to which motor fuel is directed for  
1220 delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the  
1221 purpose of resale or use. The term shall not include a tribal reservation of any recognized Native  
1222 American tribe.

1223 "Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle  
1224 or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include  
1225 gasoline or aviation jet fuel.

1226 "Distributor" means a person who acquires motor fuel from a supplier or from another distributor for  
1227 subsequent sale.

1228 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.

1229 § 4082.

1230 "Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii)  
1231 elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in  
1232 another state and has Virginia as its destination state.

1233 "Electric motor vehicle" means a motor vehicle that uses electricity as its only source of motive  
1234 power.

1235 "End seller" means the person who sells fuel to the ultimate user of the fuel.

1236 "Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or  
1237 foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller,  
1238 and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

1239 "Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another  
1240 state, territory, or foreign country.

1241 "Fuel" includes motor fuel and alternative fuel.

1242 "Fuel alcohol" means methanol or fuel grade ethanol.

1243 "Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol  
1244 outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a  
1245 railroad tank car.

1246 "Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

1247 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and  
1248 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have  
1249 an American Society for Testing Materials octane number of less than 75 as determined by the motor  
1250 method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii)  
1251 gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an  
1252 aircraft engine.

1253 "Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the  
1254 United States or its departments, agencies, and instrumentalities.

1255 "Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature,  
1256 pressure, or other adjustments.

1257 "Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2  
1258 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial  
1259 processing purposes.

1260 "Highway" means every way or place of whatever nature open to the use of the public for purposes  
1261 of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

1262 "Highway vehicle" means a self-propelled vehicle designed for use on a highway.

1263 *"Hybrid electric motor vehicle" means a motor vehicle that uses electricity and another source of*  
1264 *motive power.*

1265 "Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel  
1266 supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the  
1267 seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or  
1268 for the purchaser constitutes an import by the purchaser.

1269 "Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel  
1270 into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For  
1271 purposes of this chapter, a motor fuel transporter shall not be considered an importer.

1272 "In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to  
1273 collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal  
1274 located in another state and has Virginia as its destination state or (ii) a supplier who does business only  
1275 in Virginia.

1276 "Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et  
1277 seq.) of this chapter or § 58.1-2244.

1278 "Liquid" means any substance that is liquid above its freezing point.

1279 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

1280 "Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a  
1281 tank wagon, a transport truck, a railroad tank car, or a marine vessel.

1282 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of  
1283 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

1284 "Occasional importer" means any person who (i) imports motor fuel by any means outside the  
1285 terminal transfer system and (ii) is not required to be licensed as a bonded importer.

1286 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a  
1287 supplier's license under this chapter.

1288 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;  
1289 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in

1290 bankruptcy; club, society or other group or combination acting as a unit; or public body, including but  
1291 not limited to the Commonwealth, any other state, and any agency, department, institution, political  
1292 subdivision or instrumentality of the Commonwealth or any other state.

1293 "Position holder" means a person who holds an inventory position of motor fuel in a terminal, as  
1294 reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel"  
1295 when he has a contract with the terminal operator for the use of storage facilities and terminaling  
1296 services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

1297 "Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors,  
1298 and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or  
1299 an individual.

1300 "Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to  
1301 a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the  
1302 person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells  
1303 alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a  
1304 fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports  
1305 alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the  
1306 engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

1307 "Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery,  
1308 terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside  
1309 the terminal transfer system.

1310 "Refiner" means any person who owns, operates, or otherwise controls a refinery.

1311 "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum  
1312 products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel  
1313 or at a rack.

1314 "Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical  
1315 transfer to a transport truck or other means of conveyance outside the terminal transfer system is  
1316 complete upon delivery into the means of conveyance.

1317 "Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at  
1318 retail or dispenses the fuel at a retail location.

1319 "Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel  
1320 and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

1321 "Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a  
1322 two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive  
1323 supplier.

1324 "System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel  
1325 grade ethanol by transport truck or railroad tank car.

1326 "Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry  
1327 fuel and having a capacity of less than 6,000 gallons.

1328 "Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control  
1329 number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by  
1330 pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

1331 "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

1332 "Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines,  
1333 marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part  
1334 48.4081-1.

1335 "Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or  
1336 (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

1337 "Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes  
1338 of motor fuel over a highway.

1339 "Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive  
1340 supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other  
1341 person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and receives tax  
1342 payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other  
1343 person pursuant to § 58.1-2252.

1344 "Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to  
1345 another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer  
1346 from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on  
1347 the records of the terminal operator and (ii) is completed prior to removal of the product from the  
1348 terminal by the receiving exchange partner.

1349 "Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental  
1350 Protection Agency or Internal Revenue Service fuel-dyeing requirements.

1351 "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~~ 17.5 cents (\$0.175) per gallon on gasoline and gasohol.

*Beginning January 1, 2014, and every January 1 thereafter, the rate shall be adjusted by a percentage, as determined by the Commissioner and rounded up to the closest one-tenth of one percent, equal to the average percentage change in the Price Producers Index (PPI) for material and supply inputs for other new nonresidential construction published by the U.S. Bureau of Labor Statistics for the 36 months ending October 31 of the year immediately preceding the affected year. In no event shall the rate of tax exceed 22.5 cents per gallon.*

B. (Contingent expiration date) There is hereby levied a tax on each gallon of diesel fuel at the same rate of ~~seventeen and one-half cents per gallon on diesel fuel as the rate in effect pursuant to subsection A.~~

B. (Contingent effective date) There is hereby levied a tax on each gallon of diesel fuel at the rate of ~~sixteen 1.5 cents per gallon on diesel fuel (\$0.015) less than the rate in effect in subsection A.~~

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 (\$0.05) 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~~ 17.5 cents (\$0.175) per gallon, 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 (\$0.05) 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 (\$0.05) 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 (\$0.005) 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~~ 17.5 cents (\$0.175) per gallon, 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 (\$0.05) 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 (\$0.05) 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 (\$0.005) 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 16~~ 16 cents (\$0.16) 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.

**§ 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 in effect under subsection A of § 58.1-2217~~ on each gallon of 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 the rate in effect pursuant to subsection A of § 58.1-2217~~ on each gallon of 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 1.5 cents per gallon (\$0.015) less than the rate in effect pursuant to subsection A of § 58.1-2217~~ on each gallon of 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 1.5 cents per gallon (\$0.015) less than the rate in effect pursuant to subsection A of § 58.1-2217~~ on each gallon of 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

1413 \$100 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle *or a*  
1414 *hybrid electric motor vehicle. Beginning January 1, 2014, and each January 1 thereafter, the amount of*  
1415 *the license tax shall be adjusted by the same percentage adjustment to the tax rate pursuant to*  
1416 *subsection A of § 58.1-2217. If such a highway vehicle is registered for a period other than one year as*  
1417 *provided under § 46.2-646, the license tax shall be multiplied by the number of years or fraction thereof*  
1418 *that the vehicle will be registered.*

1419 **§ 58.1-2259.1. Refund for hybrid electric motor vehicles.**

1420 *A refund of the tax paid for the purchase of fuel shall be granted in accordance with the provisions*  
1421 *of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person*  
1422 *has paid the tax levied pursuant to this chapter upon any fuel used to fuel a hybrid electric motor*  
1423 *vehicle for which a current annual license tax has been paid pursuant to subsection B of § 58.1-2249.*

1424 **§ 58.1-2261. Refund procedure; investigations.**

1425 A. Any person entitled to a refund pursuant to § 58.1-2259 *or 58.1-2259.1* shall file with the  
1426 Commissioner an application on a form prepared and furnished by the Commissioner. Such application  
1427 shall contain the information and certifications required by the Commissioner. The applicant shall set  
1428 forth the basis for the claimed refund, the total amount of such fuel purchased and used by such  
1429 applicant, and how such fuel was used. The applicant shall retain the paid ticket, invoice, or other  
1430 document from the seller documenting the purchase of the fuel on which a refund is claimed for a  
1431 period of time to be determined by the Commissioner. *For a refund pursuant to § 58.1-2259.1, the*  
1432 *applicant shall also present a copy of a current Virginia vehicle registration for a hybrid electric motor*  
1433 *vehicle for which the annual license has been paid.* The Commissioner, upon the presentation of such  
1434 application shall refund to the claimant the proper amount of the tax paid as provided in this chapter,  
1435 subject to the provisions of subsection D. A ticket issued to the holder of a credit card as evidence of  
1436 the delivery to such holder of tax-paid fuel shall, for the purpose of this section, be a paid ticket or  
1437 invoice. Tickets or invoices marked "duplicate" shall not be acceptable.

1438 B. The application for a refund shall be filed within one year from the date of the sale as shown on  
1439 the paid ticket or invoice. For those that pay the motor fuels tax in accordance with § 58.1-2200, if the  
1440 refund amount certified by the Commissioner is different from the amount requested by the applicant,  
1441 the Commissioner shall provide an explanation to the applicant of why the refund amount differs from  
1442 the amount requested.

1443 C. In the event an assessment is rendered for failure to report and pay the tax imposed as provided  
1444 in § 58.1-2217 or § 58.1-2249 and such fuel is subject to refund under the provisions of § 58.1-2259 *or*  
1445 *58.1-2259.1*, the application for a refund shall be filed with the Commissioner by the person entitled to  
1446 such refund within one year from the date such assessment is paid and shall be accompanied by invoices  
1447 covering the sale of the fuel and billing of tax to such person.

1448 D. The Department may make any investigation it considers necessary before refunding the fuels tax  
1449 to a person, and may investigate a refund after the refund has been issued and within the time frame for  
1450 adjusting tax under this chapter. As a part of such investigation, the Department may require that the  
1451 person provide the paid ticket, invoice, or other document from the seller documenting the purchase of  
1452 the fuel on which a refund is claimed. Failure to provide a ticket, invoice, or other document evidencing  
1453 the purchase of such fuel on which a refund is requested or was previously granted will result in the  
1454 denial or reversal of that refund.

1455 E. In accordance with § 58.1-609.1, any person who is refunded tax pursuant to § 58.1-2259 *or*  
1456 *58.1-2259.1* shall be subject to the taxes imposed by Chapter 6 (§ 58.1-600 et seq.) ~~of this title~~, unless  
1457 such transaction is specifically exempted pursuant to § 58.1-609.1.

1458 **§ 58.1-2289. (Contingent effective date) Disposition of tax revenue generally.**

1459 A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by  
1460 the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be  
1461 promptly paid into the state treasury and shall constitute special funds within the Commonwealth  
1462 Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for  
1463 use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds  
1464 shall accrue to these funds. Except as provided in § 33.1-23.03:1, no portion of the revenue derived  
1465 from taxes collected pursuant to §§ 58.1-2217, 58.1-2249, or § 58.1-2701, and remaining after authorized  
1466 refunds for nonhighway use of fuel, shall be used for any purpose other than the construction,  
1467 reconstruction, or maintenance of the roads and projects comprising the State Highway System, the  
1468 Interstate System, and the secondary system of state highways and expenditures directly and necessarily  
1469 required for such purposes, including the retirement of revenue bonds.

1470 Revenues collected under this chapter may be also used for (i) contributions toward the construction,  
1471 reconstruction, or maintenance of streets in cities and towns of such sums as may be provided by law  
1472 and (ii) expenditures for the operation and maintenance of the Department of Transportation, the  
1473 Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority,  
1474 and the Department of Motor Vehicles as may be provided by law.



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

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

C. One-half cent (\$0.005) of the tax collected on each gallon of fuel on which the refund has been paid at the rate of ~~seventeen cents per gallon, or in the case of diesel fuel, fifteen and one-half cents per gallon, in effect pursuant to subsection A of § 58.1-2217~~ for each gallon of fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, and the ~~Virginia Truck and Ornamentals Research Station~~ *Hampton Roads Agricultural Research and Extension Center*, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents (\$0.015) of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement, and maintenance of public boating access areas on the public waters of ~~this~~ the Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, ~~one and one-half~~ 1.5 cents (\$0.015) per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement, and maintenance of the public docks of ~~this~~ the Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement, and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

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

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

**§ 58.1-2701. (Contingent expiration date) Amount of tax.**

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~\$0.24~~ \$0.035 more per gallon ~~than the rate in effect pursuant to subsection A of § 58.1-2217~~, 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. *Beginning January 1, 2014, and each January 1 thereafter, the amount of the fee under this subsection shall be adjusted by the same percentage of the tax rate adjustment pursuant to subsection A of § 58.1-2217.*

1536 If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due  
1537 at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration  
1538 expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the  
1539 registration fee paid is authorized by law.

1540 C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway  
1541 Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

1542 **§ 58.1-2701. (Contingent effective date) Amount of tax.**

1543 A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to  
1544 ~~nineteen and one-half~~ two cents (\$0.02) *more per gallon than the rate in effect pursuant to subsection A*  
1545 *of § 58.1-2217*, calculated on the amount of motor fuel, diesel fuel, or liquefied gases (which would not  
1546 exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square  
1547 inch absolute); used in its operations within the Commonwealth.

1548 The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed  
1549 on a motor carrier by any other provision of law.

1550 B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles  
1551 that are not registered under the International Registration Plan shall pay a fee of \$100 per year for each  
1552 qualified highway vehicle, regardless of whether such vehicle will be included on the motor carrier's  
1553 IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the  
1554 provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2. *Beginning January 1, 2014, and*  
1555 *each January 1 thereafter, the amount of the fee under this subsection shall be adjusted by the same*  
1556 *percentage adjustment to the tax rate pursuant to subsection A of § 58.1-2217.*

1557 If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due  
1558 at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration  
1559 expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the  
1560 registration fee paid is authorized by law.

1561 C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway  
1562 Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

1563 **§ 58.1-2706. Credit for payment of motor fuel, diesel fuel, or liquefied gases tax.**

1564 A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to  
1565 ~~seventeen and one-half cents per gallon~~ *the rate in effect pursuant to subsection A of § 58.1-2217* on  
1566 *each gallon of* all motor fuel, diesel fuel, and liquefied gases purchased by such carrier within the  
1567 Commonwealth for use in its operations either within or without the Commonwealth and upon which the  
1568 motor fuel, diesel fuel, or liquefied gases tax imposed by the laws of the Commonwealth has been paid  
1569 by such carrier. Evidence of the payment of such tax in such form as may be required by, or is  
1570 satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

1571 B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the  
1572 amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as  
1573 a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding  
1574 quarters or (ii) be refunded, upon application, duly verified and presented and supported by such  
1575 evidence as may be satisfactory to the Department.

1576 C. The Department may allow a refund upon receipt of proper application and review. It shall be at  
1577 the discretion of the Department to determine whether an audit is required.

1578 D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the  
1579 applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of  
1580 not less than ~~ten~~ 10 days to the applicant and the Attorney General.

1581 E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and  
1582 Construction Fund.

1583 F. Whenever a person operating under lease to a motor carrier to perform transport services on  
1584 behalf of the carrier purchases motor fuel, diesel fuel, or liquefied gases relating to such services, such  
1585 payments or purchases may, at the discretion of the Department, be considered payment or purchases by  
1586 the carrier.

1587 **2. That § 58.1-611.1 of the Code of Virginia is repealed.**

1588 **3. That the additional revenue attributable to the statewide 0.5 percent increase in the sales and**  
1589 **use tax rate pursuant to this act shall be distributed as follows: 30% to the Highway Maintenance**  
1590 **and Operating Fund, and 70 % returned to the locality in which it was collected.**

1591 **4. That the provisions of this act relating to the authority to compel remote sellers to collect the**  
1592 **Commonwealth's sales and use tax on sales made in the Commonwealth shall not become effective**  
1593 **unless (i) the federal government enacts legislation (the federal act) that grants states that meet**  
1594 **minimum simplification requirements specified in the federal act the authority to compel remote**  
1595 **retailers to collect sales and use tax on sales made into the Commonwealth and (ii) the Tax**  
1596 **Commissioner publishes notice in the Virginia Register of Regulations that declares that**  
1597 **conformity to the federal act is cost effective, generates additional sales and use tax revenues for**

the Commonwealth, 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. All additional sales and use tax revenue attributable to the authority to compel remote sellers to collect the Commonwealth's sales and use tax on sales made in the Commonwealth shall be used solely for transportation.

5. That any revenues distributed to a planning district commission from any of the revenues generated by § 58.1-604.7 added by this act or Chapter 8.1 (§ 58.1-818) of Title 58.1 added by this act shall not be used to calculate or reduce the share of federal, state, or local revenues or funds otherwise available to the counties and cities located in the planning district, nor shall they be used to calculate or reduce any allocation of revenues or funds made pursuant to Title 33.1 of the Code of Virginia. Such share or allocation of revenues or funds that shall not be reduced includes, but is not limited to, state basic aid payments.

6. That no county or city located in a planning district that is authorized to receive revenues pursuant to § 58.1-604.7 added by this act or Chapter 8.1 (§ 58.1-818) of Title 58.1 added by this act may reduce its local appropriation for transportation purposes below what it appropriated for transportation purposes in the fiscal year immediately preceding the fiscal year during which the planning district commission in which it is located met the requirements of § 15.2-4217.2 added by this act.

7. That the provisions of this act that generate additional revenues for certain planning district commissions for transportation purposes shall expire on December 31 of any year in which the General Assembly appropriates any of the revenues designated for a planning district commission pursuant to § 58.1-604.7 added by this act or Chapter 8.1 (§ 58.1-518) of Title 58.1 added by this act for any non-transportation-related purpose or for use in any locality other than one located in the planning district commission in which the revenue was generated.

8. That the Department of Taxation shall promulgate all necessary and reasonable regulations to govern the administration of the sales and use taxes and recordation taxes pursuant to the provisions of this act.

9. That any planning district commission that receives revenues pursuant to this act shall report annually to the General Assembly on the allocation and expenditure of all moneys deposited in the transportation fund established by such planning district commission pursuant to § 15.2-4217.2 added by this act.

10. That the provisions of this act shall become effective January 1, 2014.

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

12. That contingent upon the General Assembly adopting and the Governor signing the provisions of this Act into law, the Virginia Department of Transportation shall conduct a study on the impact of the additional funding contained in this Act and whether (i) such funding will mitigate or eliminate the need to implement tolling on Interstate 95, and (ii) such funding will mitigate expected tolling increases on the Dulles Toll Road. No tolling may commence on Interstate 95 south of the City of Fredericksburg until such time as the Department completes this study and reports to the Chairmen of the House and Senate Transportation committee on the results of the study.