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**SENATE BILL NO. 1094**

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact §§ 58.1-602, 58.1-603, 58.1-612, as it is currently effective and as it shall become effective, 58.1-3819, 58.1-3823, 58.1-3824, 58.1-3825, 58.1-3825.2, 58.1-3826, 58.1-3842, and 58.1-3843 of the Code of Virginia; Chapter 265 of the Acts of Assembly of 1977, as amended by Chapter 675 of the Acts of Assembly of 1984 and Chapter 834 of the Acts of Assembly of 1992, carried by reference in the Code of Virginia as § 58.1-3820; and Chapter 436 of the Acts of Assembly of 1990, as amended by Chapter 896 of the Acts of Assembly of 1994 and Chapter 111 of the Acts of Assembly of 2006, carried by reference in the Code of Virginia as § 58.1-3821; and to amend the Code of Virginia by adding in Article 6 of Chapter 38 of Title 58.1 a section numbered 58.1-3818.8, relating to retail sales taxes and transient occupancy taxes on the rental of rooms, lodgings, accommodations, or similar spaces.*

Patron—Hanger

Referred to Committee on Finance

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

1. That §§ 58.1-602, 58.1-603, 58.1-612, as it is currently effective and as it shall become effective, 58.1-3819, 58.1-3823, 58.1-3824, 58.1-3825, 58.1-3825.2, 58.1-3826, 58.1-3842, and 58.1-3843 of the Code of Virginia; Chapter 265 of the Acts of Assembly of 1977, as amended by Chapter 675 of the Acts of Assembly of 1984 and Chapter 834 of the Acts of Assembly of 1992, carried by reference in the Code of Virginia as § 58.1-3820; and Chapter 436 of the Acts of Assembly of 1990, as amended by Chapter 896 of the Acts of Assembly of 1994 and Chapter 111 of the Acts of Assembly of 2006, carried by reference in the Code of Virginia as § 58.1-3821, are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 38 of Title 58.1 a section numbered 58.1-3818.8 as follows:

**§ 58.1-602. Definitions.**

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

"Accommodations" means any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodgings, space, or accommodations are regularly furnished to transients for a consideration.

"Accommodations fee" means the room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than \$0.

"Accommodations intermediary" means any person other than an accommodations provider that facilitates the sale of an accommodation, acts as the merchant of record, charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of or the right to use accommodations by a customer.

"Accommodations provider" means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

"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.

"Affiliate" means the same as such term is defined in § 58.1-439.18.

"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

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SB1094

59 of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.  
60 "Custom program" means a computer program which is specifically designed and developed only for  
61 one customer. The combining of two or more prewritten programs does not constitute a custom  
62 computer program. A prewritten program that is modified to any degree remains a prewritten program  
63 and does not become custom.

64 *"Discount room charge" means the full amount charged by the accommodations provider to the*  
65 *accommodations intermediary (or an affiliate thereof) for furnishing the accommodation.*

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

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

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

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

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

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

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

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

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

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

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

116 "Modular building" means, but shall not be limited to, single and multifamily houses, apartment  
117 units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are  
118 intended to become real property, primarily constructed at a location other than the permanent site, built  
119 to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the  
120 Virginia Department of Housing and Community Development, and shipped with most permanent

components in place to the site of final assembly. For purposes of this chapter, a modular building shall not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

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

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

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

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

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

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

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

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

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

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any ~~room or rooms, lodgings, or accommodations~~ furnished to transients for less than 90 continuous days by any ~~hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration~~; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; and (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

*In the case of the "retail sale" of any accommodations made by an accommodations provider in which an accommodations intermediary does not facilitate the sale of the accommodations, the accommodations provider shall collect the retail sales and use taxes imposed in accordance with this chapter, computed on the total charges for the accommodations, and shall remit the same to the Department and shall be liable for the same.*

182 *In the case of the "retail sale" of any accommodations in which an accommodations intermediary*  
183 *facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary*  
184 *the retail sales and use taxes imposed in accordance with this chapter, computed on the discount room*  
185 *charge, and shall remit the same to the Department and shall be liable for the same, and (ii) the*  
186 *accommodations intermediary shall collect the retail sales and use taxes imposed in accordance with*  
187 *this chapter, computed on the room charge, and shall (a) remit the portion of such taxes that relates to*  
188 *the accommodations fee to the Department and shall be liable for the same and (b) remit the portion of*  
189 *such taxes that relates to the discount room charge to the accommodations provider for purposes of*  
190 *payment of the tax under clause (i) and shall be liable for the same. In the case of the "retail sale" of*  
191 *any accommodations in which an accommodations intermediary facilitates the sale, the accommodations*  
192 *intermediary shall be deemed under this chapter as a dealer making a retail sale of an accommodation.*

193 *An accommodations intermediary shall not be liable for retail sales and use taxes relating to the*  
194 *discount room charge remitted to an accommodations provider but which are not then remitted to the*  
195 *Department by the accommodations provider.*

196 *In the case of the "retail sale" of any accommodations in which an accommodations intermediary*  
197 *facilitates the sale, nothing herein shall relieve the accommodations provider from liability for retail*  
198 *sales and use taxes on any charges made by the accommodations provider for the accommodations,*  
199 *which charges are in addition to the discount room charge.*

200 *In any "retail sale" of any accommodations, the accommodations intermediary shall separately state*  
201 *the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room*  
202 *charge; thereafter such tax shall be a debt from the person renting the accommodations to the*  
203 *accommodations intermediary, recoverable at law in the same manner as other debts.*

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

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

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

217 *"Room charge" means the full retail price charged to the customer by the accommodations*  
218 *intermediary for the use of the accommodations, including any accommodations fee before taxes. The*  
219 *room charge shall be determined in accordance with 23 VAC 10-210-730 and the related rulings of the*  
220 *Department on the same.*

221 *"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional*  
222 *or otherwise, in any manner or by any means whatsoever, of tangible personal property and any*  
223 *rendition of a taxable service for a consideration, and includes the fabrication of tangible personal*  
224 *property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and*  
225 *the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on*  
226 *the premises of the person furnishing, preparing, or serving such tangible personal property. A*  
227 *transaction whereby the possession of property is transferred but the seller retains title as security for the*  
228 *payment of the price shall be deemed a sale.*

229 *"Sales price" means the total amount for which tangible personal property or services are sold,*  
230 *including any services that are a part of the sale, valued in money, whether paid in money or otherwise,*  
231 *and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer,*  
232 *without any deduction therefrom on account of the cost of the property sold, the cost of materials used,*  
233 *labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any*  
234 *cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from*  
235 *credit extended on sales of tangible personal property under conditional sale contracts or other*  
236 *conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local*  
237 *property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity*  
238 *added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory*  
239 *gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such*  
240 *mandatory gratuity or service charge does not exceed 20% 20 percent of the price of the meal. Where*  
241 *used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or*  
242 *used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of*  
243 *the new or used articles and the credit for the used articles.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 58.1-612. (Contingent expiration date) Tax collectible from dealers; "dealer" defined;**

**jurisdiction.**

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

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

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

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

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; *or*

9. *Is an accommodations intermediary as defined in § 58.1-602 facilitating the sale of an accommodation located in the Commonwealth.*

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 twelve times during a calendar year to deliver goods sold by him;

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

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

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

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

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

10. *Is an accommodations intermediary as defined in § 58.1-602 that regularly facilitates the sale of an accommodation located in the Commonwealth.*

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

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

person;

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

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

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

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

**§ 58.1-612. (Contingent effective date) Tax collectible from dealers; "dealer" defined; jurisdiction.**

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

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

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

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

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

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

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

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

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

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

9. *Is an accommodations intermediary as defined in § 58.1-602 facilitating the sale of an accommodation located in the Commonwealth.*

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; or

10. Is an accommodations intermediary as defined in § 58.1-602 that regularly facilitates the sale of an accommodation located in the Commonwealth.

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

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

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

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

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

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

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

#### **§ 58.1-3818.8. Definitions.**

As used in this article, unless the context requires a different meaning:

"Accommodations" means any room, space, or unit for which tax is imposed on the retail sale of the same pursuant to this article.

"Accommodations fee" means the room charge less the discount charge, if any, provided that the accommodations fee shall not be less than \$0.

"Accommodations intermediary" means any person other than an accommodations provider that facilitates the sale of an accommodation, acts as the merchant of record, charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of or the right to use accommodations by a customer.



"Accommodations provider" means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

"Affiliate" means the same as such term is defined in § 58.1-439.18.

"Discount charge" means the full amount charged by the accommodations provider to the accommodations intermediary (or an affiliate thereof) for furnishing the accommodation.

"Retail sale" means a sale to any person for any purpose other than for resale.

"Room charge" means the same as such term is defined in § 58.1-602.

**§ 58.1-3819. Transient occupancy tax.**

A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. *The tax shall be imposed on the total price paid by the ultimate consumer for the use or possession of the room or space occupied in a retail sale.* Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the ~~amount of charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of the room or space occupied in a retail sale*; however, Accomack County, Albemarle County, Alleghany County, Amherst County, Augusta County, Bedford County, Botetourt County, Brunswick County, Campbell County, Caroline County, Carroll County, Craig County, Cumberland County, Dinwiddie County, Floyd County, Franklin County, Giles County, Gloucester County, Greene County, Halifax County, James City County, King George County, Loudoun County, Madison County, Mecklenburg County, Montgomery County, Nelson County, Northampton County, Page County, Patrick County, Prince Edward County, Prince George County, Prince William County, Pulaski County, Rockbridge County, Smyth County, Spotsylvania County, Stafford County, Tazewell County, Washington County, Wise County, Wythe County, and York County may levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with the local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality. If any locality has enacted an additional transient occupancy tax pursuant to subsection C of § 58.1-3823, then the governing body of the locality shall be deemed to have complied with the requirement that it consult with local tourism industry organizations, including lodging properties. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

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

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

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

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

**§ 58.1-3820. Arlington County transient occupancy tax.**

Notwithstanding the provisions of Chapter 443, as amended, of the Acts of Assembly of 1970 carried by reference in the Code of Virginia as § 58.1-3819, beginning on and after July 1, 1977, Arlington County is authorized to levy the transient occupancy tax permitted in § 58.1-3819 in an amount not to exceed five percent of the ~~amount of the charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale*, provided that the county's local license tax as permitted in § 58.1-3703, as amended, on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than ~~thirty~~ 30 consecutive days, on and after January 1, 1978, shall not exceed one percent of the gross receipts of such hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than ~~thirty~~ 30

consecutive days. For purposes of this section, a corporation or partnership shall be deemed an individual or group unless provided otherwise by local ordinance. For purposes of exercising the authority granted by this section, those ordinances enacted by Arlington County on October 26, 1991, and December 7, 1991, are validated as to their application, prospectively only, from the date of their enactment. The remaining provisions of § 58.1-3819 shall apply mutatis mutandis to the provisions of this section.

**§ 58.1-3821. Transient occupancy tax on certain rentals.**

The County of Franklin and the County of Nelson may, by ordinance, levy a transient occupancy tax on condominiums, apartments, townhouses, or like buildings when rooms or units in such buildings are rented for occupancy for fewer than ~~thirty~~ 30 days at a time. The tax imposed hereunder shall not apply to rooms or units rented for continuous occupancy by the same individual or group for 30 or more days in condominiums, apartments, townhouses, or like buildings.

Such tax shall be in an amount and on such terms as the governing body, by ordinance, may prescribe; however, in the County of Franklin such tax shall not exceed two percent of the ~~amount of charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of the room or unit occupied in a retail sale* and in the County of Nelson such tax shall not exceed ~~5%~~ *five percent* of the ~~amount of charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of the room or unit occupied in a retail sale*. Any revenue collected in Nelson County from that portion of the tax which exceeds ~~2%~~ *two percent* shall be designated and spent for promoting tourism, travel, or business that generates tourism or travel in the county. Any county which imposes the tax authorized in this section may allow the businesses collecting, accounting for, and remitting such consumer tax a commission for such service in the form of a deduction from the tax remitted. The commission amount shall be established by ordinance; however, the maximum commission payable shall not exceed five percent of the amount of tax due and accounted for nor be less than a minimum of three percent of the amount of tax due. No commission shall be allowed if the amount due was delinquent.

**§ 58.1-3823. Additional transient occupancy tax for certain counties.**

A. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, Hanover County, Chesterfield County, and Henrico County may impose:

1. An additional transient occupancy tax not to exceed four percent of the ~~amount of the charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale*. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for promoting tourism, travel, or business that generates tourism or travel in the Richmond metropolitan area; and

2. An additional transient occupancy tax not to exceed two percent of the ~~amount of the charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale*. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for expanding the Richmond Centre, a convention and exhibition facility in the City of Richmond.

3. An additional transient occupancy tax not to exceed one percent of the ~~amount of the charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale*. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for the development and improvement of the Virginia Performing Arts Foundation's facilities in Richmond, for promoting the use of the Richmond Centre and for promoting tourism, travel or business that generates tourism and travel in the Richmond metropolitan area.

B. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, any county with the county manager plan of government may impose an additional transient occupancy tax not to exceed two percent of the ~~amount of the charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale*, provided the county's governing body approves the construction of a county conference center. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. The revenues collected from the additional tax shall be designated and spent for the design, construction, debt payment, and operation of such conference center.

C. 1. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, the Counties of James City and York may impose an additional transient occupancy tax *for the use or possession of any overnight guest room in an amount* not to exceed \$2 per room per night

for the occupancy of any overnight guest room. The revenues collected from the additional tax shall be designated and expended solely for advertising the Historic Triangle area, which includes all of the City of Williamsburg and the Counties of James City and York, as an overnight tourism destination by the members of the Williamsburg Area Destination Marketing Committee of the Greater Williamsburg Chamber and Tourism Alliance. The tax imposed by this subsection shall not apply to travel campground sites or to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

2. The Williamsburg Area Destination Marketing Committee shall consist of the members as provided herein. The governing bodies of the City of Williamsburg, the County of James City, and the County of York shall each designate one of their members to serve as members of the Williamsburg Area Destination Marketing Committee. These three members of the Committee shall have two votes apiece. In no case shall a person who is a member of the Committee by virtue of the designation of a local governing body be eligible to be selected a member of the Committee pursuant to subdivision a.

a. Further, one member of the Committee shall be selected by the Board of Directors of the Williamsburg Hotel and Motel Association; one member of the Committee shall be from The Colonial Williamsburg Foundation and shall be selected by the Foundation; one member of the Committee shall be an employee of Busch Gardens Europe/Water Country USA and shall be selected by Busch Gardens Europe/Water Country USA; one member of the Committee shall be from the Jamestown-Yorktown Foundation and shall be selected by the Foundation; one member of the Committee shall be selected by the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance; and one member of the Committee shall be the President and Chief Executive Officer of the Virginia Tourism Authority who shall serve ex officio. Each of these six members of the Committee shall have one vote apiece. The President of the Greater Williamsburg Chamber and Tourism Alliance shall serve ex officio with nonvoting privileges unless chosen by the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance to serve as its voting representative. The Executive Director of the Williamsburg Hotel and Motel Association shall serve ex officio with nonvoting privileges unless chosen by the Board of Directors of the Williamsburg Hotel and Motel Association to serve as its voting representative.

In no case shall more than one person of the same local government, including the governing body of the locality, serve as a member of the Committee at the same time.

If at any time a person who has been selected to the Committee by other than a local governing body becomes or is ~~(a)~~ (i) a member of the local governing body of the City of Williamsburg, the County of James City, or the County of York, or ~~(b)~~ (ii) an employee of one of such local governments, the person shall be ineligible to serve as a member of the Committee while a member of the local governing body or an employee of one of such local governments. In such case, the body that selected the person to serve as a member of the Commission shall promptly select another person to serve as a member of the Committee.

3. The Williamsburg Area Destination Marketing Committee shall maintain all authorities granted by this section. The Greater Williamsburg Chamber and Tourism Alliance shall serve as the fiscal agent for the Williamsburg Area Destination Marketing Committee with specific responsibilities to be defined in a contract between such two entities. The contract shall include provisions to reimburse the Greater Williamsburg Chamber and Tourism Alliance for annual audits and any other agreed-upon expenditures. The Williamsburg Area Destination Marketing Committee shall also contract with the Greater Williamsburg Chamber and Tourism Alliance to provide administrative support services as the entities shall mutually agree.

4. The provisions in subdivision 2 relating to the composition and voting powers of the Williamsburg Area Destination Marketing Committee shall be a condition of the authority to impose the tax provided herein.

For purposes of this subsection, "advertising the Historic Triangle area" as an overnight tourism destination means advertising that is intended to attract visitors from a sufficient distance so as to require an overnight stay of at least one night.

D. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.

**§ 58.1-3824. Additional transient occupancy tax in Fairfax County.**

In addition to such transient occupancy taxes as are authorized by this chapter, beginning July 1, 2004, Fairfax County may impose an additional transient occupancy tax not to exceed two percent of the amount of charge for the occupancy of any room or space occupied; total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale, provided that the board of supervisors of the County appropriates the revenues collected from such tax as follows:

1. No more than 75 percent of such revenues shall be designated for and appropriated to Fairfax County to be spent for tourism promotion in the County after consultation with local tourism industry organizations and in support of the local tourism industry; and

2. The remaining portion of such revenues shall be designated for and appropriated to a nonprofit convention and visitor's bureau located in Fairfax County.

The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

For purposes of this section, "tourism promotion" means direct funding designated and spent solely for tourism, marketing of tourism or initiatives that, as determined in consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality.

**§ 58.1-3825. Additional transient occupancy tax in Rockbridge County and the Cities of Lexington and Buena Vista.**

In addition to such transient occupancy taxes as are authorized by this chapter, Rockbridge County and the Cities of Lexington and Buena Vista may impose an additional transient occupancy tax not to exceed two percent of the ~~amount of charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale*. The authority to impose such tax is hereby individually granted to the local governing bodies of such county and cities. However, if such tax is adopted, the local governing body of such county or cities adopting the tax shall appropriate the revenues collected therefrom to the Virginia Horse Center Foundation to be used by the Foundation for the sole purpose of making principal and interest payments on a promissory note or notes signed or executed by the Virginia Horse Center Foundation or the Virginia Equine Center Foundation prior to January 1, 2004, with the Rockbridge Industrial Development Authority as the obligee or payee, as part of an agreement for the Authority to issue bonds on behalf of or for improvements at the Virginia Horse Center Foundation, Virginia Equine Center Foundation, or Virginia Equine Center.

For purposes of this section, such note or notes signed or executed prior to January 1, 2004, shall include any notes or other indebtedness incurred to refinance such note or notes, regardless of the date of refinancing, provided that such refinancing shall not include any debt or the payment of any debt for any activity relating to the Virginia Horse Center Foundation, Virginia Equine Center Foundation, or Virginia Equine Center that occurs on or after January 1, 2004.

The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days. Such tax may no longer be imposed in such county or such cities after final payment of the note or notes described herein.

**§ 58.1-3825.2. Additional transient occupancy tax in Bath County.**

A. In addition to such transient occupancy tax as is authorized by § 58.1-3819, Bath County may impose an additional transient occupancy tax not to exceed two percent of the ~~amount of the charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale*.

B. The revenues collected from the additional tax shall be designated and spent as follows:

1. One-half of such revenue shall be designated and spent solely for tourism and travel, marketing of tourism, or initiatives that, as determined after consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

2. One-half of such revenue shall be designated and spent solely for the design, operation, construction, improvement, acquisition, and debt service for such expenses on debt incurred after June 30, 2009, of tourism facilities, historic sites, beautification projects, promotion of the arts, regional tourism marketing efforts, capital costs related to travel and transportation including air service, public parks and recreation, and information centers that attract travelers to the locality and generate tourism revenues in the locality.

C. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms.

D. If Bath County requires local hotel and motel businesses, or any class thereof, to collect, account for, and remit the tax imposed pursuant to this section, the County may allow such businesses a commission for such service in the form of a deduction from the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof, no less than three percent and not to exceed five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount due is delinquent.

E. All tax collections pursuant to this section shall be deemed to be held in trust for Bath County.

**§ 58.1-3826. Scope of transient occupancy tax.**

A. The transient occupancy tax imposed pursuant to the authority of this article shall be imposed only for the ~~occupancy~~ *use or possession* of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.

*B. In the case of the retail sale of any accommodations made by an accommodations provider and in which an accommodations intermediary does not facilitate the sale of the accommodations, the accommodations provider shall collect the tax imposed pursuant to this article, computed on the total price paid for the use or possession of the accommodations, and shall remit the same to the locality and shall be liable for the same.*

*In the case of the retail sale of any accommodations in which an accommodations intermediary facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary the tax imposed pursuant to this article, computed on the discount charge, and shall remit the same to the locality and shall be liable for the same, and (ii) the accommodations intermediary shall collect the tax imposed pursuant to this article, computed on the room charge, and shall (a) remit the portion of such tax that relates to the accommodations fee to the locality and shall be liable for the same and (b) remit the portion of such tax that relates to the discount charge to the accommodations provider for purposes of payment of the tax under clause (i) and shall be liable for the same. In the case of the retail sale of any accommodations in which an accommodations intermediary facilitates the sale, the accommodations intermediary shall be deemed under this article as a facility making a retail sale of an accommodation.*

*An accommodations intermediary shall not be liable for taxes under this article relating to the discount charges that are remitted to an accommodations provider but which are not then remitted to the locality by the accommodations provider. An accommodations intermediary shall not be liable for taxes under this article solely because it collected such taxes using the tax rate for the applicable locality as set forth in a table maintained by the Department on its website, which tax rate was incorrectly reported on the Department's website at the time of the retail sale.*

*In any retail sale of any accommodations, the accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge; thereafter such tax shall be a debt from the person renting the accommodations to the accommodations intermediary, recoverable at law in the same manner as other debts.*

**§ 58.1-3842. Combined transient occupancy and food and beverage tax.**

*A. Rappahannock County and Madison County, by duly adopted ordinance, are hereby authorized to levy a tax ~~on occupancy~~ for the use or possession of any room or space occupied in a bed and breakfast establishment on which the county is authorized to levy a transient occupancy tax under § 58.1-3819 and on food and beverages sold for human consumption within such establishment on which the county is authorized to levy a food and beverage tax under § 58.1-3833, when the charges for the ~~occupancy use~~ or possession of the room or space and for the sale of food and beverages are assessed in the aggregate and not separately stated. Such tax shall not exceed four percent of the total ~~amount charged for the occupancy of the room or space occupied~~ price paid by the ultimate consumer for the use or possession of the room or space occupied and for the food and beverages. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.). Collection of such tax shall be in a manner prescribed by the governing body. All taxes collected under the authority of this article shall be deemed to be held in trust for the county imposing the tax.*

*B. If a bed and breakfast establishment separately states charges for the ~~occupancy use or possession~~ of the room or space and for the sale of food and beverages, a transient occupancy tax levied under § 58.1-3819 and a food and beverage tax levied under § 58.1-3833 shall apply to such separately stated charges, as applicable.*

*C. Any tax imposed pursuant to this article shall not apply within the limits of any town located in such county, where such town now, or hereafter, imposes a town meals tax or a town transient occupancy tax on the same subject. If the governing body of any town within a county, however, provides that a county tax authorized by this article shall apply within the limits of such town, then such tax may be imposed within such towns.*

*D. This tax shall be levied only if a food and beverage tax has been approved in a referendum within the county as provided by subsection A of § 58.1-3833. No county in which the levy of a food and beverage tax has been approved in a referendum pursuant to subsection A of § 58.1-3833 shall be required to submit an amendment to its meals tax ordinance or a further question to the voters in a referendum prior to adopting an ordinance adopting or amending the tax authorized by this article.*

*E. Nothing herein contained shall affect any authority heretofore granted to any county to levy a food and beverage tax or a transient occupancy tax.*

**§ 58.1-3843. Scope of transient occupancy tax.**

*A. As used in this section, unless the context requires a different meaning:*

*"Accommodations" means any room or space for which tax is imposed on the retail sale of the same pursuant to this article.*

*"Accommodations fee" means the same as such term is defined in § 58.1-3818.8.*

797 *"Accommodations intermediary" means the same as such term is defined in § 58.1-3818.8.*

798 *"Accommodations provider" means the same as such term is defined in § 58.1-3818.8.*

799 *"Discount charge" means the same as such term is defined in § 58.1-3818.8.*

800 *"Retail sale" means the same as such term is defined in § 58.1-3818.8.*

801 *"Room charge" means the same as such term is defined in § 58.1-3818.8.*

802 B. Notwithstanding any other provision of law, general or special, the tax imposed on transient room  
803 rentals pursuant to the authority of this article shall be imposed only for the ~~occupancy~~ use or  
804 possession of any room or space that is suitable or intended for occupancy by transients for dwelling,  
805 lodging, or sleeping purposes.

806 C. In the case of the retail sale of any accommodations made by an accommodations provider and in  
807 which an accommodations intermediary does not facilitate the sale of the accommodations, the  
808 accommodations provider shall collect the tax imposed pursuant to this article, computed on the total  
809 price paid for the use or possession of the accommodations, and shall remit the same to the locality and  
810 shall be liable for the same.

811 In the case of the retail sale of any accommodations in which an accommodations intermediary  
812 facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary  
813 the tax imposed pursuant to this article, computed on the discount charge, and shall remit the same to  
814 the locality and shall be liable for the same and (ii) the accommodations intermediary shall collect the  
815 tax imposed pursuant to this article, computed on the room charge, and shall (a) remit the portion of  
816 such tax that relates to the accommodations fee to the locality and shall be liable for the same and (b)  
817 remit the portion of such tax that relates to the discount charge to the accommodations provider for  
818 purposes of payment of the tax under clause (i) and shall be liable for the same. In the case of the  
819 retail sale of any accommodations in which an accommodations intermediary facilitates the sale, the  
820 accommodations intermediary shall be deemed under this article as a person making a retail sale of an  
821 accommodation.

822 An accommodations intermediary shall not be liable for taxes under this article relating to the  
823 discount charges that are remitted to an accommodations provider but which are not then remitted to  
824 the locality by the accommodations provider. An accommodations intermediary shall not be liable for  
825 taxes under this article solely because it collected such taxes using the tax rate for the applicable  
826 locality as set forth in a table maintained by the Department on its website, which tax rate was  
827 incorrectly reported on the Department's website at the time of the retail sale.

828 In any retail sale of any accommodations, the accommodations intermediary shall separately state  
829 the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room  
830 charge; thereafter such tax shall be a debt from the person renting the accommodations to the  
831 accommodations intermediary, recoverable at law in the same manner as other debts.

832 2. That the Department of Taxation shall develop and make publicly available guidelines no later  
833 than August 1, 2013, for purposes of developing processes and procedures implementing the  
834 amendments to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia pursuant to the  
835 provisions of this act. The development, issuance, and publication of the guidelines shall be exempt  
836 from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

837 3. That the Department of Taxation shall maintain on its website a current table indicating the  
838 rate of the local transient occupancy tax imposed by each county, city, and town of the  
839 Commonwealth. Every county, city, and town that imposes a transient occupancy tax shall no later  
840 than seven days after making a change to the rate of the tax provide written notice of the same to  
841 the Tax Commissioner for the purpose of the Department updating the table.

842 4. That except for the second enactment of this act, which shall become effective on July 1, 2013,  
843 the provisions of this act shall become effective on January 1, 2014.