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## SENATE BILL NO. 1328

Offered January 18, 2013

A BILL to amend and reenact §§ 58.1-602, 58.1-603, 58.1-604, 58.1-604.1, 58.1-608.3, 58.1-612, as it is currently effective and as it shall become effective, 58.1-614, 58.1-638, 58.1-2201, 58.1-2217, 58.1-2249, 58.1-2251, 58.1-2289, as it is currently effective and as it may become effective, 58.1-2292, 58.1-2701, as it is currently effective and as it may become effective, 58.1-2702, 58.1-2703, 58.1-2704, 58.1-2706, 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 Chapter 22 of Title 58.1 an article numbered 8.1 consisting of a section numbered 58.1-2288.1 and by adding in Article 6 of Chapter 38 of Title 58.1 a section numbered 58.1-3818.8 relating to revenues and appropriations of the Commonwealth.

Patron—Wagner

Referred to Committee on Finance

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

1. That §§ 58.1-602, 58.1-603, 58.1-604, 58.1-604.1, 58.1-608.3, 58.1-612, as it is currently effective and as it shall become effective, 58.1-614, 58.1-638, 58.1-2201, 58.1-2217, 58.1-2249, 58.1-2251, 58.1-2289, as it is currently effective and as it may become effective, 58.1-2292, 58.1-2701, as it is currently effective and as it may become effective, 58.1-2702, 58.1-2703, 58.1-2704, 58.1-2706, 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 are amended and reenacted; 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 Chapter 22 of Title 58.1 an article numbered 8.1 consisting of a section numbered 58.1-2288.1 and by adding 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 The determination whether any manufacturing, mining, processing, refining or conversion activity is  
119 industrial in nature shall be made without regard to plant size, existence or size of finished product  
120 inventory, degree of mechanization, amount of capital investment, number of employees or other factors

relating principally to the size of the business. Further, "industrial in nature" shall include, but not be limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

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

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

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

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

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

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

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

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

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

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

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

182 vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such  
183 tangible personal property to such persons and may refuse to issue certificates of registration to such  
184 persons.

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

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

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

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

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

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

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

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

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

229 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional  
230 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any  
231 rendition of a taxable service for a consideration, and includes the fabrication of tangible personal  
232 property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and  
233 the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on  
234 the premises of the person furnishing, preparing, or serving such tangible personal property. A  
235 transaction whereby the possession of property is transferred but the seller retains title as security for the  
236 payment of the price shall be deemed a sale.

237 "Sales price" means the total amount for which tangible personal property or services are sold,  
238 including any services that are a part of the sale, valued in money, whether paid in money or otherwise,  
239 and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer,  
240 without any deduction therefrom on account of the cost of the property sold, the cost of materials used,  
241 labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any  
242 cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from  
243 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%~~ *20 percent* of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

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

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

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

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

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

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

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

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

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

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

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

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

2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the

305 lease or rental of such property is an established business, or part of an established business, or the  
306 same is incidental or germane to such business.

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

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

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

312 **§ 58.1-604. Imposition of use tax.**

313 There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a  
314 tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of  
315 such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount  
316 of ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and~~  
317 ~~after August 1, 2004~~ *4.5 percent*.

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

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

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

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

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

338 **§ 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia**  
339 **for use in performing contracts.**

340 In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of  
341 § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools  
342 or other equipment brought, imported or caused to be brought into this Commonwealth for use in  
343 constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or  
344 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant,  
345 transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any  
346 part thereof. The rate of tax is ~~three and one-half percent through midnight on July 31, 2004, and four~~  
347 ~~percent beginning on and after August 1, 2004~~ *4.5 percent* on all tangible personal property except  
348 motor vehicles, which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the  
349 rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax  
350 of \$1,000.

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

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

366 A transaction taxed under § 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, 58.1-1736 or 58.1-2402 shall

not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

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

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

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

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

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

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

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) of this title, as limited herein. "Sales tax revenues" does not include the revenue generated by the ~~one-half~~ 0.5 percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § 33.1-23.03:1, ~~nor shall it include the one 1.0 percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § 58.1-638 on the basis of school age population, or the revenue generated by the 0.5 percent sales and use tax increase enacted by the 2013 Session of the General Assembly.~~ For a public facility that is a sports facility, "sales tax revenues" shall include such revenues generated by transactions taking place upon the premises of a baseball stadium or structures attached thereto.

B. Notwithstanding the definition of "public facility" in subsection A, a development project that meets the requirements for a "development of regional impact" set forth herein shall be deemed to be a

public facility under the provisions of this section. The locality in which the public facility is located shall be entitled to all sales tax revenues generated by transactions taking place at such public facility solely to pay the cost of any bonds issued to pay the cost, or portion thereof, of such public facility pursuant to subsection C. For purposes of this subsection, the development of regional impact must be located in the City of Bristol.

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

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

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

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

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

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

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

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

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;**

**551 jurisdiction.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**583** 2. Solicits business in this Commonwealth by employees, independent contractors, agents or other  
**584** representatives;

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

**588** 4. Makes regular deliveries of tangible personal property within this Commonwealth by means other  
**589** than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles  
**590** other than those operated by a common carrier enter this Commonwealth more than 12 times during a  
**591** calendar year to deliver goods sold by him;

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

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

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

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

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

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

**607** D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration  
**608** under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled  
**609** person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the  
**610** Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its  
**611** customers. The presumption in this subsection may be rebutted by demonstrating that the activities  
**612** 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.

#### **§ 58.1-614. 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 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.

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

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

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly *and by the one-half percent sales and use tax increase enacted by the 2013 Session of the General Assembly* shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid

674 to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth  
675 Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the  
676 Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent shall be set  
677 aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net  
678 revenue shall be computed as an estimate of the net revenue to be received into the state treasury each  
679 month, and such estimated payment shall be adjusted for the actual net revenue received in the  
680 preceding month. All payments shall be made to the Fund on the last day of each month.

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

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

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

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

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

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

710 Of the remaining amount:

711 a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased  
712 by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air  
713 carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however,  
714 shall receive less than \$50,000 nor more than \$2 million per year from this provision.

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

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

719 3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall  
720 be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight  
721 Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and  
722 the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall  
723 remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

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

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

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

734 a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and  
735 any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but

shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.

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

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

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

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

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

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

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

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

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

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

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

e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

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

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political

subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal share of the total project cost.

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

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

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

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

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

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

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a

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

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

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

G. *Any additional revenues generated by the changes adopted by the 2013 Session of the General Assembly related to the collection of sales and use tax on transient room rentals by intermediaries shall be distributed as follows:*

1. *Fifty percent of such additional revenues shall be paid into the Transportation Trust Fund and allocated pursuant to the provisions of subsection A; and*

2. *Fifty percent of such additional revenues shall be paid into the Highway Maintenance and Operating Fund.*

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

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

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

#### **§ 58.1-2201. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

965 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.  
966 § 4082.

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

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

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

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

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

978 "Fuel" includes motor fuel and alternative fuel.

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

980 "Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol  
981 outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a



- 982 railroad tank car.
- 983 "Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.
- 984 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and  
 985 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have  
 986 an American Society for Testing Materials octane number of less than 75 as determined by the motor  
 987 method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii)  
 988 gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an  
 989 aircraft engine.
- 990 "Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the  
 991 United States or its departments, agencies, and instrumentalities.
- 992 "Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature,  
 993 pressure, or other adjustments.
- 994 "Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2  
 995 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial  
 996 processing purposes.
- 997 "Highway" means every way or place of whatever nature open to the use of the public for purposes  
 998 of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.
- 999 "Highway vehicle" means a self-propelled vehicle designed for use on a highway.
- 1000 "Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel  
 1001 supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the  
 1002 seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or  
 1003 for the purchaser constitutes an import by the purchaser.
- 1004 "Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel  
 1005 into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For  
 1006 purposes of this chapter, a motor fuel transporter shall not be considered an importer.
- 1007 "In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to  
 1008 collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal  
 1009 located in another state and has Virginia as its destination state or (ii) a supplier who does business only  
 1010 in Virginia.
- 1011 "Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et  
 1012 seq.) of this chapter or § 58.1-2244.
- 1013 "Liquid" means any substance that is liquid above its freezing point.
- 1014 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.
- 1015 "Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a  
 1016 tank wagon, a transport truck, a railroad tank car, or a marine vessel.
- 1017 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of  
 1018 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.
- 1019 "Occasional importer" means any person who (i) imports motor fuel by any means outside the  
 1020 terminal transfer system and (ii) is not required to be licensed as a bonded importer.
- 1021 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a  
 1022 supplier's license under this chapter.
- 1023 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;  
 1024 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in  
 1025 bankruptcy; club, society or other group or combination acting as a unit; or public body, including but  
 1026 not limited to the Commonwealth, any other state, and any agency, department, institution, political  
 1027 subdivision or instrumentality of the Commonwealth or any other state.
- 1028 "Position holder" means a person who holds an inventory position of motor fuel in a terminal, as  
 1029 reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel"  
 1030 when he has a contract with the terminal operator for the use of storage facilities and terminaling  
 1031 services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
- 1032 "Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors,  
 1033 and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or  
 1034 an individual.
- 1035 "Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to  
 1036 a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the  
 1037 person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells  
 1038 alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a  
 1039 fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports  
 1040 alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the  
 1041 engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.
- 1042 "Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery,

terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside the terminal transfer system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Watercraft" means any vehicle used on waterways.

**§ 58.1-2217. Taxes levied; rate.**

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasoline.

~~B.~~ (Contingent expiration date) There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel.

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

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

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

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

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

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

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

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

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of \$50 \$75 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle *or an alternative fuel vehicle. However, no license tax shall be levied on any vehicle that is subject to the tax levied by subsection A or that is registered under the International Registration Plan.* If such a highway vehicle is registered for a period other than one year as provided under § 46.2-646, the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered.

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

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

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

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

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

received by the Commissioner by the last business day the Department is open for business in June.

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

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

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

*Article 8.1.*

*Additional Taxes.*

**§ 58.1-2288.1. Additional taxes on fuels.**

A. Beginning July 1, 2013, and thereafter, any licensee or person required to precollect the tax imposed on fuels under § 58.1-2217 or 58.1-2249 shall also be required to precollect an additional tax, which is hereby imposed at the rate established in subsection B, on the number of gallons of gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel for which the licensee or person is precollecting the tax under such section or sections. The tax imposed under this section shall be in addition to all other taxes and fees of every kind now imposed by law.

B. The tax imposed under subsection A shall be imposed at a cents-per-gallon rate determined by the Commissioner. Such tax shall be imposed at a cents-per-gallon rate equal to 5.5 percent of the stateside average wholesale price of a gallon of self-serve unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner rounded up to the nearest one-tenth of one cent.

In computing the cents-per-gallon tax, the Commissioner shall use four base periods. The period from March 1 through May 31 shall be the base period for the purpose of determining the cents-per-gallon tax for the immediately following period beginning July 1 and ending September 30, inclusive. The period from June 1 through August 31 shall be the base period for determining the cents-per-gallon tax for the immediately following period beginning October 1 and ending December 31, inclusive. The period from September 1 through November 30 shall be the base period for determining the cents-per-gallon tax for the immediately following period beginning January 1 and ending March 31, inclusive. The period from December 1 through the last day of February shall be the base period for determining the cents-per-gallon tax for the immediately following period beginning April 1 and ending June 30, inclusive.

C. The tax imposed under this section on gallons of fuel for which the licensee or person is precollecting the tax under § 58.1-2217 or 58.1-2249 is imposed on the ultimate consumer but shall be precollected as prescribed herein, and the levies and assessments imposed on the licensee or person for such tax are imposed on licensee or person as agents of the Commonwealth for the precollection of the tax.

D. The tax imposed by subsection A shall be due and paid by such licensee or person at the same time that the tax under § 58.1-2217 or 58.1-2249, as applicable, is due. All provisions of this chapter, including return filing and reporting requirements, payment requirements and due dates for payment of tax, requirements to precollect tax, late payment penalties and interest, jeopardy assessments, civil penalties, discounts, deductions, and exemptions from tax, shall apply mutatis mutandis to the additional tax imposed under this section.

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

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

Revenues collected under this chapter may be also used for (i) contributions toward the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law and (ii) expenditures for the operation and maintenance of the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, 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. Except as provided in subsection F, the tax collected on each gallon of aviation fuel sold and delivered or used in this 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 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 of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for 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, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents 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 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 cents 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 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.

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

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

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

Revenues collected under this chapter may be also used for (i) contributions toward the construction,

reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law and (ii) expenditures for the operation and maintenance of the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, 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 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 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 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, for 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, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents 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 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 cents 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 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.

**§ 58.1-2292. (Effective July 1, 2013) Definitions.**

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

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

"Cost price" means the same as that term is defined in § 58.1-602, and also includes all federal and state excise taxes and storage tank fees paid by the distributor. "Cost price" does not include separately stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this chapter.

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

"Distributor" means (i) any person engaged in the business of selling fuels in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any fuels for sale, or any other person engaged in the business of selling fuels in the Commonwealth; (ii) any person who makes, manufactures, fabricates, processes, or stores fuels in the Commonwealth for sale in the Commonwealth; or (iii) any person engaged in the business of selling fuels outside the

Commonwealth who ships or transports fuels to any person in the business of selling fuels in the Commonwealth.

"Fuel" means any fuel *that was* subject to tax under Chapter 22 (§ 58.1-2200 et seq.) *as such chapter was in effect on June 30, 2013.*

"Gross sales" means the same as that term is defined in § 58.1-602.

"Retail dealer" means any person, including a distributor, who sells fuels to a consumer or to any person for any purpose other than resale.

"Sale" means the same as that term is defined in § 58.1-602 and also includes the distribution of fuel by a distributor to itself as a retail dealer.

"Sales price" means the same as that term is defined in § 58.1-602 and also includes all transportation and delivery charges, regardless of whether the charges are separately stated on the invoice. Sales price does not include separately stated federal diesel fuel excise taxes, unless the distributor fails to exclude the federal diesel excise tax when collecting the tax imposed pursuant to this chapter.

**§ 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 \$0.21 per gallon calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), *other than gasoline, gasohol, or blended fuel that contains gasoline*, 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 *and that are not powered by gasoline, gasohol, or blended fuel that contains gasoline* shall pay a fee of \$150 per year for each qualified highway vehicle regardless of whether such vehicle will be included on the motor carrier's IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

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

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

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

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to nineteen and one-half cents per gallon calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~ 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), *other than gasoline, gasohol, or blended fuel that contains gasoline*, 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 *and that are not powered by gasoline, gasohol, or blended fuel that contains gasoline* shall pay a fee of \$100 per year for each qualified highway vehicle, regardless of whether such vehicle will be included on the motor carrier's IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

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

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

**§ 58.1-2702. Exemptions and exceptions.**

The provisions of this chapter shall not apply to a person, firm or corporation owning or operating:

1. Recreational vehicles, as defined in the provisions of the International Fuel Tax Agreement (IFTA);

2. The first two Virginia-licensed trucks and tractor trucks *powered by a motor fuel other than gasoline, gasohol, or blended fuel that contains gasoline*, if used exclusively for farm use as defined in § 46.2-698 and if not licensed in any other state;

3. Qualified highway vehicles of a licensed highway vehicle dealer when operated without compensation for purposes incident to a sale or for demonstration; or

4. Any highway vehicle owned and operated by the United States, the District of Columbia, the Commonwealth of Virginia or any municipality or any other political subdivision of the Commonwealth, or any other state.

**§ 58.1-2703. Payment of tax.**

The tax imposed under § 58.1-2701 shall be paid by each motor carrier quarterly to the State Treasurer on or before the last day of April, July, October and January of each year and calculated upon the amount of ~~gasoline or other~~ motor fuel used in its operations within the Commonwealth by each such carrier during the quarter ending with the last day of the preceding month.

**§ 58.1-2704. How amount of fuel used in the Commonwealth ascertained.**

On and after October 1, 1992, the amount of ~~gasoline or other~~ motor fuel used in the operations of any motor carrier in the Commonwealth shall be determined by dividing the total number of miles traveled within the Commonwealth by such carrier's vehicles during a calendar quarter by a consumption factor, such factor being comprised of the total number of miles traveled by all vehicles of the motor carrier during the quarter divided by the total amount of ~~gasoline or other~~ motor fuel used in its entire operations during such quarter.

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

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to seventeen and one-half cents per gallon on all motor fuel, diesel fuel and liquefied gases, *other than gasoline, gasohol, or blended fuel that contains gasoline*, purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

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

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

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

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

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

**§ 58.1-3818.8. 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.

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

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

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

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

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

B. Notwithstanding any other provision of law, general or special, the tax imposed on transient room rentals 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.

1781 *C. In the case of the retail sale of any accommodations made by an accommodations provider and in*  
1782 *which an accommodations intermediary does not facilitate the sale of the accommodations, the*  
1783 *accommodations provider shall collect the tax imposed pursuant to this article, computed on the total*  
1784 *price paid for the use or possession of the accommodations, and shall remit the same to the locality and*  
1785 *shall be liable for the same.*

1786 *In the case of the retail sale of any accommodations in which an accommodations intermediary*  
1787 *facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary*  
1788 *the tax imposed pursuant to this article, computed on the discount charge, and shall remit the same to*  
1789 *the locality and shall be liable for the same and (ii) the accommodations intermediary shall collect the*  
1790 *tax imposed pursuant to this article, computed on the room charge, and shall (a) remit the portion of*  
1791 *such tax that relates to the accommodations fee to the locality and shall be liable for the same and (b)*  
1792 *remit the portion of such tax that relates to the discount charge to the accommodations provider for*  
1793 *purposes of payment of the tax under clause (i) and shall be liable for the same. In the case of the*  
1794 *retail sale of any accommodations in which an accommodations intermediary facilitates the sale, the*  
1795 *accommodations intermediary shall be deemed under this article as a person making a retail sale of an*  
1796 *accommodation.*

1797 *An accommodations intermediary shall not be liable for taxes under this article relating to the*  
1798 *discount charges that are remitted to an accommodations provider but which are not then remitted to*  
1799 *the locality by the accommodations provider. An accommodations intermediary shall not be liable for*  
1800 *taxes under this article solely because it collected such taxes using the tax rate for the applicable*  
1801 *locality as set forth in a table maintained by the Department on its website, which tax rate was*  
1802 *incorrectly reported on the Department's website at the time of the retail sale.*

1803 *In any retail sale of any accommodations, the accommodations intermediary shall separately state*  
1804 *the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room*  
1805 *charge; thereafter such tax shall be a debt from the person renting the accommodations to the*  
1806 *accommodations intermediary, recoverable at law in the same manner as other debts.*

1807 **2. That the provisions of § 58.1-2289 of this act shall become effective July 1, 2014.**

1808 **3. That the provisions of this act relating to the collection of retail sales and hotel taxes on**  
1809 **transient room rentals shall become effective on July 1, 2014.**

1810 **4. That the Department of Taxation shall develop and make publicly available guidelines no later**  
1811 **than August 1, 2013, for purposes of developing processes and procedures implementing the**  
1812 **amendments to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia pursuant to the**  
1813 **provisions of this act. The development, issuance, and publication of the guidelines shall be exempt**  
1814 **from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

1815 **5. That the Department of Taxation shall maintain on its website a current table indicating the**  
1816 **rate of the local transient occupancy tax imposed by each county, city, and town of the**  
1817 **Commonwealth. Every county, city, and town that imposes a transient occupancy tax shall no later**  
1818 **than seven days after making a change to the rate of the tax provide written notice of the same to**  
1819 **the Tax Commissioner for the purpose of the Department updating the table.**