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HOUSE BILL NO. 969

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact §§ 58.1-600, 58.1-601, 58.1-602, 58.1-603, and 58.1-604, as they are currently effective and as they may become effective, 58.1-605, as it is currently effective, 58.1-606, as it is currently effective, 58.1-609.1, 58.1-609.3, 58.1-609.5, 58.1-609.10, 58.1-610.1, 58.1-611.1, 58.1-611.2, 58.1-611.3, 58.1-612, 58.1-613, 58.1-615, as it is currently effective and as it may become effective, 58.1-618, 58.1-621, 58.1-622, 58.1-623, 58.1-635, as it is currently effective and as it may become effective, and 58.1-638.2, as it may become effective, of the Code of Virginia; to amend and reenact the seventh enactment of Chapter 766 of the Acts of Assembly of 2013; to amend the Code of Virginia by adding sections numbered 58.1-606.1, 58.1-606.2, 58.1-611.4, 58.1-612.1, 58.1-624.1, 58.1-625.2, 58.1-628.3, 58.1-635.1, 58.1-635.2, and 58.1-637.1 and by adding in Chapter 6 of Title 58.1 sections numbered 58.1-639.1 and 58.1-639.2; and to repeal §§ 58.1-604.6, 58.1-605, as it may become effective, 58.1-606, as it may become effective, and 58.1-628.2 of the Code of Virginia, relating to the Virginia Retail Sales and Use Tax Act.

Patrons—Davis and Albo

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-600, §§ 58.1-601, 58.1-602, 58.1-603, and 58.1-604, as they are currently effective and as they may become effective, §§ 58.1-605, as it is currently effective, 58.1-606, as it is currently effective, 58.1-609.1, 58.1-609.3, 58.1-609.5, 58.1-609.10, 58.1-610.1, 58.1-611.1, 58.1-611.2, 58.1-611.3, 58.1-612, 58.1-613, 58.1-615, as it is currently effective and as it may become effective, 58.1-618, 58.1-621, 58.1-622, 58.1-623, 58.1-635, as it is currently effective and as it may become effective, and 58.1-638.2, as it may become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-606.1, 58.1-606.2, 58.1-611.4, 58.1-612.1, 58.1-624.1, 58.1-625.2, 58.1-628.3, 58.1-635.1, 58.1-635.2, and 58.1-637.1 and by adding in Chapter 6 of Title 58.1 sections numbered 58.1-639.1 and 58.1-639.2 as follows:

§ 58.1-600. Short title.

This chapter shall be known and may be cited as the "Virginia ~~Retail Sales and Use Tax~~ *Streamlined Retail Sales and Use* Act."

§ 58.1-601. (Contingent expiration date) Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter.

B. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance which the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

C. 1. The General Assembly has determined that it is in the best interest of the Commonwealth to simplify and modernize the retail sales and use tax administration in order to substantially reduce the burden of tax compliance. In furtherance of these goals, effective beginning on and after July 1, 2017, the Virginia Retail Sales and Use Tax Act shall be amended and renamed the Virginia Streamlined Retail Sales and Use Tax Act to conform to the requirements of the national Streamlined Sales and Use Tax Agreement.

2. The Tax Commissioner, one representative appointed by the Governor, and two representatives appointed by the General Assembly shall serve on the national Governing Board charged with administering the Streamlined Sales and Use Tax Agreement.

§ 58.1-601. (Contingent effective date) Administration of chapter.

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

B. To comply with any provisions in any legislation enacted by the Congress of the United States that require states to simplify the administration of their sales and use taxes as a condition to require remote sellers to collect and remit their state and local sales taxes, the Tax Commissioner shall take all administrative actions he deems necessary to facilitate the Commonwealth's compliance with the

minimum simplification requirements, including but not limited to: (i) providing adequate software and services to remote sellers and single and consolidated providers that identify the applicable destination rate, including the state and local sales tax rate (if any), to be applied on sales on which the Commonwealth imposes sales and use tax; (ii) providing certification procedures for both single providers and consolidated providers to make software and services available to remote sellers; (iii) ensuring that no more than one audit be performed or required for all state and local taxing jurisdictions within the Commonwealth; and (iv) requiring that no more than one sales and use tax return per month be filed with the Department of Taxation by any remote seller or any single or consolidated provider on behalf of such remote seller.

C. 1. The General Assembly has determined that it is in the best interest of the Commonwealth to simplify and modernize the retail sales and use tax administration in order to substantially reduce the burden of tax compliance. In furtherance of these goals, effective beginning on and after July 1, 2017, the Virginia Retail Sales and Use Tax Act shall be amended and renamed the Virginia Streamlined Retail Sales and Use Tax Act to conform to the requirements of the national Streamlined Sales and Use Tax Agreement.

2. The Tax Commissioner, one representative appointed by the Governor, and two representatives appointed by the General Assembly shall serve on the national Governing Board charged with administering the Streamlined Sales and Use Tax Agreement.

~~C.~~ *D.* For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance that the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

§ 58.1-602. (Contingent expiration date) Definitions.

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

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

"Agent" means a person appointed by the seller to represent the seller before the member states of the Streamlined Sales Tax Project.

"Agreement" means the Streamlined Sales and Use Tax Agreement, as adopted by multiple states on November 12, 2002, together with any amendments, that covers the administration of sales and use taxes.

"Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

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

"Anonymous data" means information that does not identify a person.

"Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

"Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where (i) the products are otherwise distinct and identifiable and (ii) the products are sold for one nonitemized price. A "bundled transaction" shall not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

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

"Certified Automated System" or "CAS" means software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

"Certified Service Provider" or "CSP" means an agent certified under the Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

"Clothing" means all human wearing apparel suitable for general use. "Clothing" shall include, but

is not limited to, the following:

1. Aprons, household, and shop;

2. Athletic supporters;

3. Baby receiving blankets;

4. Bathing suits and caps;

5. Beach capes and coats;

6. Belts and suspenders;

7. Boots;

8. Coats and jackets;

9. Costumes;

10. Diapers, children and adult, including disposable diapers;

11. Ear muffs;

12. Footlets;

13. Formal wear;

14. Garters and garter belts;

15. Girdles;

16. Gloves and mittens for general use;

17. Hats and caps;

18. Hosiery;

19. Insoles for shoes;

20. Lab coats;

21. Neckties;

22. Overshoes;

23. Pantyhose;

24. Rainwear;

25. Rubber pants;

26. Sandals;

27. Scarves;

28. Shoes and shoelaces;

29. Slippers;

30. Sneakers;

31. Socks and stockings;

32. Steel toed shoes;

33. Underwear;

34. Uniforms, athletic and nonathletic; and

35. Wedding apparel.

"Clothing" shall not include:

1. Belt buckles sold separately;

2. Costume masks sold separately;

3. Patches and emblems sold separately;

4. Sewing equipment and supplies, including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and

5. Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

"Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

"Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

"Confidential taxpayer information" means all information that is protected under the Commonwealth's laws, regulations, and privileges.

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

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

"Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

"Delivery charges" or "transportation charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or

services. "Delivery charges" does not include charges for handling, crating, packing, preparation for mailing or delivery, and similar charges.

"Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

1. Contains one or more of the following dietary ingredients:

a. A vitamin;

b. A mineral;

c. An herb or other botanical;

d. An amino acid;

e. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

2. Is intended for ingestion in tablet, capsule, powder, soft gel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

3. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

"Direct mail" means printed material delivered or distributed by the United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

"Disaster Preparedness General Supply" means a general purpose item that may be used in preparation or response to a disaster. The following is an all-inclusive list of disaster preparedness general supplies:

1. Batteries (excluding automobile and marine batteries) AAA, AA, C, D, six-volt or nine-volt;

2. Cellular telephone batteries and chargers;

3. Satellite phones;

4. Self-powered light sources;

5. Portable self-powered radios, two-way radios, weather-band radios, and NOAA weather radios;

6. Gas or diesel fuel containers;

7. Nonelectric food storage coolers;

8. Portable generators; and

9. Storm shutter devices.

"Disaster Preparedness Safety Supply," means a safety item that may be used in preparation for or response to a disaster. The following is an all-inclusive list of disaster preparedness safety supplies:

1. Carbon monoxide detectors;

2. Smoke detectors;

3. Fire extinguishers; and

4. First aid kits.

"Disaster Preparedness Food-Related Supply" means a food or food-related item that may be used in preparation for or response to a disaster. The following is an all-inclusive list of disaster preparedness food-related supplies:

1. Artificial ice;

2. Water storage container;

3. Manual can opener; and

4. Bottled water.

"Disaster Preparedness Fastening Supply" means a fastening item or an item used for securing property or covering property that may be used in preparation or response to a disaster. The following is an all-inclusive list of disaster preparedness fastening supplies:

1. Bungee cords;

2. Rope;

3. Ratchet straps;

4. Duct tape;

5. Boat anchor;

6. Fender, anchor chain, dock line or similar device;

7. Tarpaulins and other flexible waterproof sheeting; and

8. Ground anchor or tie down kits.

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

transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

2. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

3. Intended to affect the structure or any function of the body.

"Durable medical equipment" means equipment including repair and replacement parts for same, but does not include mobility-enhancing equipment, which:

1. Can withstand repeated use;

2. Is primarily and customarily used to serve a medical purpose;

3. Generally is not useful to a person in the absence of illness or injury;

4. Is not worn in or on the body; and

5. Is appropriate for use in the home.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Food and food ingredients" means substances, whether in liquid, concentrated, solid or frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, or food sold by a seller whose proper primary North American Industry Classification System (NAICS) classification is manufacturing in sector 311.

"Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

"Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

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

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

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

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

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

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

"Layaway" means a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and at the end of the payment period receives the merchandise. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

"Lease or rental" means ~~the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property~~ *any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.*

1. Lease or rental does not include:

a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price not exceeding the greater of $100 or one percent of the total required payments; or

c. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

2. Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1), as amended or renumbered, or successor provisions.

3. This definition shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law.

4. This definition shall be applied beginning July 1, 2017, and shall have no retroactive impact on existing leases or rentals.

"Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

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

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

"Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include durable medical equipment, which:

1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

2. Is not generally used by persons with normal mobility; and

3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Model 1 seller" means a seller registered under the Agreement that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

"Model 2 seller" means a seller registered under the Agreement that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

"Model 3 seller" means a seller registered under the Agreement that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

"Model 4 seller" means a seller registered under the Agreement that is not a Model 1 seller, Model 2 seller, or Model 3 seller.

"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. "Motor vehicle" does not include any all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. The taxes under this chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles, mopeds, and off-road motorcycles.

"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.

"Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The over-the-counter drug label includes:

1. A "Drug Facts" panel; or

2. A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation.

"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.

"Personally identifiable information" means information that identifies a person.

"Prepared food" means:

1. Food sold in a heated state or heated by the seller;

2. Two or more food ingredients mixed or combined by the seller for sale as a single item; or

3. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

For purposes of subdivision 2 of this definition, "prepared food" does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer, as recommended by the Food and Drug Administration in Chapter 3, part 401.11 of its Food Code so as to prevent food-borne illnesses.

"Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.

"Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person

modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software," provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."

~~"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.~~

"Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for same, worn on or in the body to:

1. Artificially replace a missing portion of the body;

2. Prevent or correct physical deformity or malfunction; or

3. Support a weak or deformed portion of the body.

"Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

"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~~ *any sale, lease, or rental for any purpose other than for resale, sublease, or subrent*.

~~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; (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; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.~~

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

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

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

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on

the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

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

"Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

1. The seller's cost of the property sold;

2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

3. Separately stated delivery charges; or

4. Separately stated installation charges.

"Sales price" shall not include:

1. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

2. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

3. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

4. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

5. That portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal;

6. That portion of the amount paid by the purchaser as a mandatory gratuity or service charge, separately stated on the invoice or billing document by a restaurant, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the price of the meal; and

7. Credit for any trade-in, as determined by state law.

"Sales price" shall include consideration received by the seller from third parties if:

1. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

2. The seller has an obligation to pass the price reduction or discount through to the purchaser;

3. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

4. One of the following criteria is met:

a. The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

b. The purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount ("preferred customer" card that is available to any patron does not constitute membership in such a group); or

c. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser.

"School art supply" means an item commonly used by a student in a course of study for artwork. The following is an all-inclusive list:

INTRODUCED

1. Clay and glazes;
2. Paints, acrylic, tempera, and oil;
3. Paintbrushes for artwork;
4. Sketch and drawing pads; and
5. Watercolors.

"School computer supply" means an item commonly used by a student in a course of study in which a computer is used. The following is an all-inclusive list:
1. Computer storage media; diskettes, compact disks;
2. Handheld electronic schedulers except devices that are cellular phones;
3. Personal digital assistants except devices that are cellular phones;
4. Computer printers; and
5. Printer supplies for computers; printer paper and printer ink.

"School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The following is an all-inclusive list:
1. Reference books, including dictionaries and thesauruses;
2. Reference maps and globes;
3. Textbooks; and
4. Workbooks.

"School music supply" means an item commonly used by a student in a course related to the study of music.

"School supply" means an item commonly used by a student in a course of study. The term is mutually exclusive of the terms "school art supply," "school instructional material," "school music supply," and "school computer supply." The following is an all-inclusive list:
1. Binders;
2. Blackboard chalk;
3. Book bags;
4. Calculators;
5. Cellophane tape;
6. Compasses;
7. Composition books;
8. Crayons;
9. Erasers;
10. Folders; expandable, pocket, plastic, and manila;
11. Glue, paste, and paste sticks;
12. Highlighters;
13. Index card boxes;
14. Index cards;
15. Legal pads;
16. Lunch boxes;
17. Markers;
18. Notebooks;
19. Paper; loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
20. Pencil boxes and other supply boxes;
21. Pencil sharpeners;
22. Pencils;
23. Pens;
24. Protractors;
25. Rulers;
26. Scissors; and
27. Writing tablets.

"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,~~ *electricity, water, gas, and steam; (ii) prewritten computer software;* and ~~(ii)~~ *(iii)* manufactured signs.

"Telephone calling card" means a card, similar in appearance to a credit card, the purchase of which gives the holder access to communication services and enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decrease in number with use.

"Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. This definition shall only apply to the provisions of this chapter.

"Transient" means any person who rents, leases, or otherwise occupies transient accommodations for less than 90 continuous days. The term "transient" shall not include a purchaser of camping memberships, time shares, condominiums, or other similar contracts or interests that permit the use of or constitute an interest in real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license that entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a "transient," provided that the term or time period involved is for seven years or more.

"Transient accommodations" means any room or rooms, lodgings, or other accommodations furnished 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 for a consideration.

"Transportation equipment" means any of the following:

1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

a. Registered through the International Registration Plan; and

b. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

3. Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

4. Containers designed for use on and component parts attached or secured on the items set forth in this definition.

"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.

§ 58.1-602. (Contingent effective date) Definitions.

A. As used in this chapter, unless the context clearly shows otherwise:

"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.

"Agent" means a person appointed by the seller to represent the seller before the member states of the Streamlined Sales Tax Project.

"Agreement" means the Streamlined Sales and Use Tax Agreement, as adopted by multiple states on November 12, 2002, together with any amendments, that covers the administration of sales and use taxes.

"Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

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

"Anonymous data" means information that does not identify a person.

"Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

"Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where (i) the products are otherwise distinct and identifiable and (ii) the products are sold for one nonitemized price. A "bundled transaction" shall not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

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

"Certified Automated System" or "CAS" means software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

"Certified Service Provider" or "CSP" means an agent certified under the Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

"Clothing" means all human wearing apparel suitable for general use. "Clothing" shall include, but is not limited to, the following:

1. Aprons, household, and shop;
2. Athletic supporters;
3. Baby receiving blankets;
4. Bathing suits and caps;
5. Beach capes and coats;
6. Belts and suspenders;
7. Boots;
8. Coats and jackets;
9. Costumes;
10. Diapers, children and adult, including disposable diapers;
11. Ear muffs;
12. Footlets;
13. Formal wear;
14. Garters and garter belts;
15. Girdles;
16. Gloves and mittens for general use;
17. Hats and caps;
18. Hosiery;
19. Insoles for shoes;
20. Lab coats;

21. Neckties;
22. Overshoes;
23. Pantyhose;
24. Rainwear;
25. Rubber pants;
26. Sandals;
27. Scarves;
28. Shoes and shoe laces;
29. Slippers;
30. Sneakers;
31. Socks and stockings;
32. Steel toed shoes;
33. Underwear;
34. Uniforms, athletic and nonathletic; and
35. Wedding apparel.
"Clothing" shall not include:
1. Belt buckles sold separately;
2. Costume masks sold separately;
3. Patches and emblems sold separately;
4. Sewing equipment and supplies, including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and
5. Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.
"Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
"Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
"Confidential taxpayer information" means all information that is protected under the Commonwealth's laws, regulations, and privileges.
~~"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.~~
"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.
"Delivered electronically" means delivered to the purchaser by means other than tangible storage media.
"Delivery charges" or "transportation charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services. "Delivery charges" does not include charges for handling, crating, packing, preparation for mailing or delivery, and similar charges.
"Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:
1. Contains one or more of the following dietary ingredients:
a. A vitamin;
b. A mineral;
c. An herb or other botanical;
d. An amino acid;
e. A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
f. A concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and
2. Is intended for ingestion in tablet, capsule, powder, soft gel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
3. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.
"Direct mail" means printed material delivered or distributed by the United States mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct

mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

"Disaster Preparedness General Supply" means a general purpose item that may be used in preparation or response to a disaster. The following is an all-inclusive list of disaster preparedness general supplies:

1. Batteries (excluding automobile and marine batteries) AAA, AA, C, D, six-volt or nine-volt;

2. Cellular telephone batteries and chargers;

3. Satellite phones;

4. Self-powered light sources;

5. Portable self-powered radios, two-way radios, weather-band radios, and NOAA weather radios;

6. Gas or diesel fuel containers;

7. Nonelectric food storage coolers;

8. Portable generators; and

9. Storm shutter devices.

"Disaster Preparedness Safety Supply," means a safety item that may be used in preparation or response to a disaster. The following is an all-inclusive list of disaster preparedness safety supplies:

1. Carbon monoxide detectors;

2. Smoke detectors;

3. Fire extinguishers; and

4. First aid kits.

"Disaster Preparedness Food-Related Supply" means a food or food-related item that may be used in preparation or response to a disaster. The following is an all-inclusive list of disaster preparedness food-related supplies:

1. Artificial ice;

2. Water storage container;

3. Manual can opener; and

4. Bottled water.

"Disaster Preparedness Fastening Supply" means a fastening item or an item used for securing property or covering property that may be used in preparation or response to a disaster. The following is an all-inclusive list of disaster preparedness fastening supplies:

1. Bungee cords;

2. Rope;

3. Ratchet straps;

4. Duct tape;

5. Boat anchor;

6. Fender, anchor chain, dock line, or similar device;

7. Tarpaulins and other flexible waterproof sheeting; and

8. Ground anchor or tie down kits.

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

"Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

2. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

3. Intended to affect the structure or any function of the body.

"Durable medical equipment" means equipment including repair and replacement parts for same, but does not include mobility-enhancing equipment, which:

1. Can withstand repeated use;

2. Is primarily and customarily used to serve a medical purpose;

3. Generally is not useful to a person in the absence of illness or injury;

4. Is not worn in or on the body; and

5. Is appropriate for use in the home.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Food and food ingredients" means substances, whether in liquid, concentrated, solid or frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, or

food sold by a seller whose proper primary North American Industry Classification System (NAICS) classification is manufacturing in sector 311.

"Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

"Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

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

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

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

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

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

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

"Layaway" means a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and at the end of the payment period receives the merchandise. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

"Lease or rental" means ~~the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property~~ *any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.*

1. Lease or rental does not include:

a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price not exceeding the greater of $100 or one percent of the total required payments; or

c. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.

2. Lease or rental does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or

disposition of the property as defined in 26 U.S.C. § 7701(h)(1), as amended or renumbered, or successor provisions.

3. This definition shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law.

4. This definition shall be applied beginning July 1, 2017, and shall have no retroactive impact on existing leases or rentals.

"Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

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

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

"Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include durable medical equipment, which:

1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

2. Is not generally used by persons with normal mobility; and

3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

"Model 1 seller" means a seller registered under the Agreement that has selected a CSP as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

"Model 2 seller" means a seller registered under the Agreement that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

"Model 3 seller" means a seller registered under the Agreement that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

"Model 4 seller" means a seller registered under the Agreement that is not a Model 1 seller, Model 2 seller, or Model 3 seller.

"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. "Motor vehicle" does not include any

all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. The taxes under this chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles, mopeds, and off-road motorcycles.

"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.

"Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The over-the-counter drug label includes:

1. A "Drug Facts" panel; or

2. A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation.

"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.

"Personally identifiable information" means information that identifies a person.

"Prepared food" means:

1. Food sold in a heated state or heated by the seller;

2. Two or more food ingredients mixed or combined by the seller for sale as a single item; or

3. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

For purposes of subdivision 2 of this definition, "prepared food" does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer, as recommended by the Food and Drug Administration in Chapter 3, part 401.11 of its Food Code so as to prevent food-borne illnesses.

"Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.

"Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software," provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."

~~"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.~~

"Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for same, worn on or in the body to:

1. Artificially replace a missing portion of the body;

2. Prevent or correct physical deformity or malfunction; or

3. Support a weak or deformed portion of the body.

"Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

"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~~

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~~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~~ *any sale, lease, or rental for any purpose other than for resale, sublease, or subrent*.

~~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; (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; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.~~

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

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

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

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

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

"Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction

for the following:

1. The seller's cost of the property sold;

2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

3. Separately stated delivery charges; or

4. Separately stated installation charges.

"Sales price" shall not include:

1. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

2. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

3. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

4. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

5. That portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal;

6. That portion of the amount paid by the purchaser as a mandatory gratuity or service charge, separately stated on the invoice or billing document by a restaurant, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the price of the meal; and

7. Credit for any trade-in, as determined by state law.

"Sales price" shall include consideration received by the seller from third parties if:

1. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

2. The seller has an obligation to pass the price reduction or discount through to the purchaser;

3. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

4. One of the following criteria is met:

a. The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

b. The purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount ("preferred customer" card that is available to any patron does not constitute membership in such a group); or

c. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser.

"School art supply" means an item commonly used by a student in a course of study for artwork. The following is an all-inclusive list:

1. Clay and glazes;

2. Paints, acrylic, tempera, and oil;

3. Paintbrushes for artwork;

4. Sketch and drawing pads; and

5. Watercolors.

"School computer supply" means an item commonly used by a student in a course of study in which a computer is used. The following is an all-inclusive list:

1. Computer storage media; diskettes, compact disks;

2. Handheld electronic schedulers except devices that are cellular phones;

3. Personal digital assistants except devices that are cellular phones;

4. Computer printers; and

5. Printer supplies for computers; printer paper and printer ink.

"School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The following is an all-inclusive list:

1. Reference books, including dictionaries and thesauruses;

2. Reference maps and globes;

3. Textbooks; and

4. Workbooks.

"School music supply" means an item commonly used by a student in a course related to the study of music.

"School supply" means an item commonly used by a student in a course of study. The term is

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mutually exclusive of the terms "school art supply," "school instructional material," "school music supply," and "school computer supply." The following is an all-inclusive list:

1. Binders;

2. Blackboard chalk;

3. Book bags;

4. Calculators;

5. Cellophane tape;

6. Compasses;

7. Composition books;

8. Crayons;

9. Erasers;

10. Folders; expandable, pocket, plastic, and manila;

11. Glue, paste, and paste sticks;

12. Highlighters;

13. Index card boxes;

14. Index cards;

15. Legal pads;

16. Lunch boxes;

17. Markers;

18. Notebooks;

19. Paper; loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

20. Pencil boxes and other supply boxes;

21. Pencil sharpeners;

22. Pencils;

23. Pens;

24. Protractors;

25. Rulers;

26. Scissors; and

27. Writing tablets.

"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,~~ *electricity, water, gas, and steam; (ii) prewritten computer software;* and ~~(ii)~~ *(iii)* manufactured signs.

"Telephone calling card" means a card, similar in appearance to a credit card, the purchase of which gives the holder access to communication services and enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decrease in number with use.

"Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. This definition shall only apply to the provisions of this chapter.

"Transient" means any person who rents, leases, or otherwise occupies transient accommodations for less than 90 continuous days. The term "transient" shall not include a purchaser of camping memberships, time shares, condominiums, or other similar contracts or interests that permit the use of

or constitute an interest in real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license that entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a "transient," provided that the term or time period involved is for seven years or more.

"Transient accommodations" means any room or rooms, lodgings, or other accommodations furnished 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 for a consideration.

"Transportation equipment" means any of the following:

1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

a. Registered through the International Registration Plan; and

b. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

3. Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

4. Containers designed for use on and component parts attached or secured on the items set forth in this definition.

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

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

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

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

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

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

§ 58.1-603. (Contingent expiration date) Imposition of sales tax.

A. 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 4.3 percent:

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

2. *Of the gross sales price on the initial sale of every telephone calling card, which shall be exempt from all other state and local utility taxes.*

3. Of the gross sales price of each item of prepared food, as defined in § 58.1-602.

4. Of the gross sales price of any food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitute more than 80 percent of the total gross receipts of

that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any dealer, as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

5. Of the gross sales price of automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair, whether or not separately stated on the invoice.

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

~~3.~~ *7.* Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

~~4.~~ *8.* Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

~~5.~~ *9.* Of the gross sales of any services that are expressly stated as taxable within this chapter.

B. The tax levied under this section shall apply to persons who make 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. The tax levied under this chapter shall also apply to any other transaction that the Tax Commissioner, upon investigation, finds to be in lieu of a sale of tangible personal property. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the purchase price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

C. Any changes in the rate of tax levied under this chapter or the items on which this tax is levied shall not become effective until the first day of a calendar quarter following such rate change.

§ 58.1-603. (Contingent effective date) Imposition of sales tax.

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

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

2. *Of the gross sales price on the initial sale of every telephone calling card, which shall be exempt from all other state and local utility taxes.*

3. Of the gross sales price of each item of prepared food, as defined in § 58.1-602.

4. Of the gross sales price of any food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitute more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any dealer, as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

5. Of the gross sales price of automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair, whether or not separately stated on the invoice.

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

~~3.~~ *7.* Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

~~4.~~ *8.* Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

~~5.~~ *9.* Of the gross sales of any services which are expressly stated as taxable within this chapter.

B. The tax levied under this section shall apply to persons who make 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. The tax levied under this chapter shall also apply to any other transaction that the Tax Commissioner, upon investigation, finds to be in lieu of a sale of tangible personal property. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the purchase price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

C. Any changes in the rate of tax levied under this chapter or the items on which this tax is levied shall not become effective until the first day of a calendar quarter following such rate change.

§ 58.1-604. (Contingent expiration date) Imposition of use tax.

A. There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of 4.3 percent:

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

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

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

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

5. (Contingent repeal date — see note) The use tax shall not apply to out-of-state mail order catalog purchases totaling $100 or less during any calendar year.

B. Any changes in the rate of tax levied under this chapter shall not become effective until the first day of a calendar quarter following such rate change.

§ 58.1-604. (Contingent effective date) Imposition of use tax.

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

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

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

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

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

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

B. Any changes in the rate of tax levied under this chapter shall not become effective until the first day of a calendar quarter following such rate change.

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

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

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

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

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

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

F. Any changes in the local sales tax boundaries shall be effective only on the first day of a calendar quarter after a minimum of at least 60 days' notice to remote sellers and single and consolidated providers.

~~E.~~ *G.* All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales ~~tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers~~ *according to the rules established under § 58.1-606.1*. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

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

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

to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

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

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

~~J.~~ *L.* It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection ~~G or H~~ *I or J* of this section be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

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

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

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

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

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

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

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

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after notification is provided.

E. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes ~~is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers~~ *shall be determined according to § 58.1-606.1.* However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

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

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

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

§ 58.1-606.1. Situs of local sales and use tax.

For purposes of determining the situs of the transaction subject to taxation under §§ 58.1-605 and 58.1-606:

1. For retail sales, excluding leases or rentals, in which the order is received in the Commonwealth by the seller, where receipt of the product by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs in the Commonwealth:

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

b. When the product is delivered to the purchaser at a location within the Commonwealth other than the business location of the dealer, the sale is sourced to the city or county in which the dealer's business is located, without regard to the city or county of possible use by the purchaser.

c. The sourcing provisions set forth in subdivision 1 shall only apply to those retail sale transactions in which, at the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of sales or use tax to be imposed captures the location where the order is received. For all other retail sale transactions, the sale shall be sourced according to the provisions set forth in subdivision 2.

The Commonwealth may not require a seller to utilize a recordkeeping system that captures the location where an order is received to calculate the proper amount of sales or use tax to be imposed.

2. For sales in which the order is received from a business location outside of the Commonwealth:

a. When the product is not received by the purchaser at a business location of the dealer, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee) known to the dealer.

b. When subdivision 2 a does not apply, the sale is sourced to the location indicated by an address

for the purchaser that is available from the business records of the dealer that are maintained in the ordinary course of the dealer's business when use of this address does not constitute bad faith.

c. When neither subdivision 2 a nor 2 b applies, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

d. When subdivisions 2 a, b, and c do not apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provides the digital transfer of the products sold).

e. When a purchaser remits sales and use tax pursuant to a direct payment permit, as authorized in § 58.1-624, such tax shall be allocated to the location where receipt of the product by the purchaser occurs or the product is first used as determined by the laws of the Commonwealth.

3. For purposes of determining the situs of the transaction subject to taxation under §§ 58.1-605 and 58.1-606, "place of business" shall include, but not be limited to, a store, a sales or other office, or any warehouse.

4. The lease or rental of tangible personal property, other than property identified in subdivision 5 or 6, shall be sourced as follows:

a. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subdivision 2. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subdivision 2.

c. This subdivision does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

5. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as follows:

a. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

b. For a lease or rental that does not require recurring periodic payments, the payment shall be sourced the same as a retail sale in accordance with the provisions of subdivision 2.

c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

6. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subdivision 2.

7. For purposes of determining the situs of a transaction, the term "receive" or "receipt" shall mean:

a. Taking possession of tangible personal property;

b. Making first use of services; or

c. Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" or "receipt" shall not include possession by a shipping company on behalf of the purchaser.

§ 58.1-606.2. Locality database required.

A. For purposes of determining the correct local jurisdiction when applying the situs requirements set forth in subdivision 2 of § 58.1-606.1, the Department shall develop and make available to all dealers a database that assigns each five- and nine-digit zip code within the Commonwealth to the proper local jurisdiction.

B. Any dealer, CSP, or purchaser that can demonstrate to the satisfaction of the Tax Commissioner that the proper amount of tax was not charged or collected due solely to the reliance on incorrect data contained in any database required pursuant to this section shall be relieved from the liability to the state or its local jurisdictions for failing to charge, collect, or remit the proper amount of tax. A purchaser holding a direct pay permit shall be relieved of liability for failure to remit the amount of tax

due solely to the reliance on incorrect data contained in any of the databases required pursuant to this section.

§ 58.1-609.1. Governmental and commodities exemptions.

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

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

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

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

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

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

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

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

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

9. Watercraft as defined in § 58.1-1401.

10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

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

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

13. [Expired.]

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

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

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

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

18. (Effective until July 1, 2017) Qualified products designated as Energy Star or WaterSense with a sales price of $2,500 or less per product purchased for noncommercial home or personal use. The exemption provided by this subdivision shall apply only to sales occurring during the three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday.

For the purposes of this exemption, an Energy Star qualified product is any dishwasher, clothes washer, air conditioner, ceiling fan, light bulb, dehumidifier, programmable thermostat, or refrigerator~~, the energy efficiency of which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's requirements under the Energy Star program~~ *that meets the energy efficiency guidelines set by the United States Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star label*. For the purposes of this exemption, WaterSense qualified

products are those that ~~have been recognized as being water efficient by the WaterSense program sponsored~~ *meet the water efficiency and performance criteria set* by the U.S. Environmental Protection Agency ~~as indicated by a~~ *and are authorized to bear the U.S. Environmental Protection Agency* WaterSense label.

19. On or after July 1, 2015, but before January 1, 2019, gold, silver, or platinum bullion whose sales price exceeds $1,000. Each piece of gold, silver, or platinum need not exceed $1,000, provided that the sales price of one entire transaction of such pieces exceeds $1,000. "Gold, silver, or platinum bullion" means gold, silver, or platinum, and any combination thereof, that has gone through a refining process and is in a state or condition such that its value depends on its mass and purity and not on its form, numismatic value, or other value. Gold, silver, or platinum bullion may contain other metals or substances, provided that the other substances by themselves have minimal value compared with the value of the gold, silver, or platinum. "Gold, silver, or platinum bullion" does not include jewelry or works of art.

§ 58.1-609.3. Commercial and industrial exemptions.

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

1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel.

3. Tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

5. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

7. Meals furnished by restaurants or food service operators to employees as a part of wages.

8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and supplies and materials used directly in maintaining and preparing textile products for rental or leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile products.

9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority

pursuant to such section.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption directly in the rendition of their services.

11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or photocopying of products for sale or resale.

12. From July 1, 1994, and ending July 1, 2016, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

13. Beginning July 1, 1997, (i) the sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind possessing space flight capability, including the components thereof, irrespective of whether such facility, system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal property placed on or used aboard any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and services provided to operate and maintain launch facilities, launch equipment, payload processing facilities and payload processing equipment used to conduct spaceport activities.

For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

The exemptions provided by this subdivision shall not be denied by reason of a failure, postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or any components thereof.

14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible personal property used primarily in the integrated process of designing, developing, manufacturing, or testing a semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor equipment without regard to whether the property is actually contained in or used in a cleanroom environment, touches the product, is used before or after production, or is affixed to or incorporated into real estate.

15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

16. Railroad rolling stock when sold or leased by the manufacturer thereof.

17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter ending November 2007, for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware when part of a new investment of at least $75 million in such exempt property, when such investment results in the creation of at least 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such investment was made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority entered into or amended between January 1, 2008, and December 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The exemption shall not apply to any computer software sold separately from the computer equipment, nor shall it apply to general building improvements or fixtures.

18. (Effective until June 30, 2020) Beginning July 1, 2010, and ending June 30, 2020, computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment

exempted in this paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a data center that (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009, of at least $150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies to the data center operator and the tenants of the data center if they collectively meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption, including a data center operator on behalf of itself and its tenants, must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying data center or data center tenant claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial investment. The exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or other fixtures.

18. (Effective June 30, 2020) Beginning July 1, 2010, and ending June 30, 2020, computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment exempted in this paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a data center that (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009, of at least $150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone. Prior to claiming such exemption, any qualifying person claiming the exemption must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying person claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial investment. The exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or other fixtures.

19. The transfer of title to tangible personal property after its use as tools, tooling, machinery, or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

§ 58.1-609.5. Service exemptions.

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

1. Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made; services rendered by repairmen for which a separate charge is made; and services not involving an exchange of tangible personal property which provide access to or use of the Internet and any other related electronic communication service, including software, data, content and other information services delivered electronically via the Internet.

2. An amount separately charged for labor or services rendered in installing, applying, remodeling, or repairing property sold or rented.

3. Transportation charges separately stated.

4. Separately stated charges for alterations to apparel, clothing and garments.

5. Charges for gift wrapping services performed by a nonprofit organization.

6. An amount separately charged for labor or services rendered in connection with the modification of prewritten programs as defined in § 58.1-602.

7. Custom programs as defined in § 58.1-602.

8. The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for more 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.

~~9. Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair or replacement parts and repair labor, shall be subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may purchase repair or replacement parts under a resale certificate of exemption. Warranty plans issued by an insurance company, which constitute insurance transactions, are subject to the provisions of subdivision 1 above.~~

§ 58.1-609.10. Miscellaneous exemptions.

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

1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of (i) food, prepared food and meals and (ii) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on fewer than 24 occasions in a calendar year.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.

7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised, edited, reformatted or copied documents, including but not limited to documents stored on or transmitted by electronic media, to its client or to third parties in the course of the professional's rendition of services to its clientele.

8. School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

9. ~~Medicines, drugs~~ *Drugs*, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his professional practice, regardless of whether such practice is organized as a sole proprietorship, partnership, or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician

assistants engaged in the practice of medicine, optometry, or nursing; ~~medicines and~~ drugs purchased for use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise exempt under this section; and samples of prescription drugs and medicines and their packaging distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those ~~medicines and~~ drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of § 58.1-609.2, any veterinarian dispensing or selling ~~medicines or~~ drugs on prescription shall be deemed to be the user or consumer of all such medicines and drugs.

10. ~~Wheelchairs and parts therefor, braces, crutches, prosthetic devices~~ *Durable medical equipment*, orthopedic appliances, catheters, urinary accessories, other durable medical equipment and devices, and related parts and supplies specifically designed for those products; and insulin and insulin syringes, and equipment, devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when such items or parts are purchased by or on behalf of an individual for use by such individual. ~~Durable medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or injury, and (iv) is appropriate for use in the home.~~

11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

12. Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.

13. Special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate when such equipment is prescribed by a licensed physician.

14. a. (i) Any ~~nonprescription drugs and proprietary medicines~~ *over-the-counter drugs* purchased for the cure, mitigation, treatment, or prevention of disease in human beings and (ii) any samples of ~~nonprescription drugs and proprietary medicines~~ *over-the-counter drugs* distributed free of charge by the manufacturer, including packaging materials and constituent elements and ingredients.

b. ~~The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to regulations promulgated by the Department of Taxation.~~ The exemption authorized in this subdivision shall not apply to ~~cosmetics~~ *grooming and hygiene products*.

15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under § 501(c)(3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church membership while meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools. The exemption for such churches shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid advertising and are used in carrying out the work of the church; gifts including food for distribution outside the public church building; food, disposable serving items, cleaning supplies and teaching materials used in the operation of camps or conference centers by the church or an organization composed of churches that are exempt under this subdivision and which are used in carrying out the work of the church or churches; and property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment; and building materials installed by the church, and for which the church does not contract with a person or entity to have installed, in the public church buildings used in carrying out the work of the church and its related ministries, including, but not limited to worship services; administrative rooms; and kindergarten, elementary, and secondary schools.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and olive pits.

19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

§ 58.1-610.1. Modular building manufacturers and retailers.

The retail sale of a modular building, as defined by § 58.1-602, by a modular building manufacturer or modular building retailer, as defined by § 58.1-602, shall be subject to the tax authorized by this chapter upon sixty percent of the retail sales price. If the modular building manufacturer has paid such tax on the ~~cost~~ *purchase* price of materials incorporated in a modular building that has been constructed for sale without installation, it may credit against the tax shown to be due on the return the amount of sales or use tax paid on the ~~cost~~ *purchase price* of materials used in fabricating such a modular building.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food ~~purchased for human consumption~~ shall be levied and distributed as follows:

1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food ~~purchased for human consumption~~ pursuant to §§ 58.1-605 and 58.1-606.

C. As used in this section, "food ~~purchased for human consumption~~" ~~has~~ *shall be given*the same meaning as "food *and food ingredients*" defined in ~~the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption~~ *§ 58.1-602*. ~~For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.~~

§ 58.1-611.2. Limited exemption for certain school supplies and clothing.

Beginning in 2015, and ending July 1, 2017, for a three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 shall not apply to ~~certain~~ (i) school supplies~~, including, but not limited to, dictionaries, notebooks, pens, pencils, notebook paper, and calculators~~, *school art supplies, and school instructional material as defined in § 58.1-602* and (ii) clothing ~~and footwear designed to be worn on or about the human body~~. The tax exemption shall apply to each article of school supplies, *school art supplies, or school instructional material* with a selling price of $20 or less, and each article of clothing ~~or footwear~~ with a selling price of $100 or less. *The exemption shall not apply to any school computer supplies, as defined in § 58.1-602.* Any discount, coupon, or other credit offered ~~either~~ by the retailer ~~or by a vendor of the retailer~~ to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 of each year.

§ 58.1-611.3. (Expires July 1, 2017) Exemption for disaster preparedness supplies.

Beginning in 2015, for a three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 shall not apply to ~~(i) portable generators used to provide light or communications or preserve food in the event of a power outage and; (ii) certain other hurricane preparedness equipment, including, but not limited to, blue ice, carbon monoxide detectors, cell phone batteries, cell phone chargers, gas or diesel fuel tanks, nonelectric food storage coolers, portable self-powered light sources, portable self-powered radios, two-way radios, weather band radios, storm shutter devices, tarpaulins or other flexible waterproof sheeting, ground anchor systems or tie down kits, gas-powered chain saws and chain saw accessories, and packages of AAA cell, AA cell, C cell, D cell, 6 volt, or 9 volt batteries, excluding automobile and boat batteries. As used in this section, "storm shutter" means materials and products manufactured, rated, and marketed specifically for the purpose of~~

~~preventing window damage from storms. The tax exemption shall apply to each portable generator with a selling price of $1,000 or less, each gas-powered chainsaw with a selling price of $350 or less, and each article of other hurricane preparedness equipment with a selling price of $60 or less~~ *disaster preparedness general supplies, disaster preparedness safety supplies, disaster preparedness food-related supplies, or disaster preparedness fastening supplies. However, the tax exemption shall only apply to portable generators with a selling price of $1,000 or less and each other article of disaster preparedness general supplies, disaster preparedness safety supplies, disaster preparedness food-related supplies, or disaster preparedness fastening supplies with a selling price of $60 or less.* Any discount, coupon, or other credit offered ~~either~~ by the retailer ~~or by a vendor of the retailer~~ to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 of each year.

§ 58.1-611.4. Bundled transactions.

A. The determination of whether a bundled transaction that includes the rendering of a service and the provision of tangible personal property constitutes a taxable transaction shall be based upon the true object of the transaction. If the overall object of the transaction is to secure a service, and the tangible personal property which is transferred to the customer is not critical to the transaction, the transaction may constitute an exempt service. However, if the object of the transaction is to secure the property which it produces, the entire charge shall be subject to the Retail Sales and Use Tax.

B. For purposes of the tax imposed by this chapter, all other bundled transactions are subject to tax at the rate levied on the sale of tangible personal property at retail pursuant to the provisions of §§ 58.1-603, 58.1-603.1, 58.1-604, and 58.1-604.01.

C. In order to be deemed a "bundled transaction," products must be otherwise distinct and identifiable and must be sold for one nonitemized price.

1. "Distinct and identifiable products" does not include:

a. Packaging, such as containers, boxes, sacks, bags, and bottles, or other materials, such as wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that is incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes;

b. A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the sales price of the product purchased does not vary depending on the inclusion of the product "provided free of charge"; or

c. Items included in the definition of "sales price," pursuant to § 58.1-602.

2. The term "one nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

3. A transaction that otherwise meets the definition of a "bundled transaction," as defined in § 58.1-602, is not a "bundled transaction" if it is:

a. The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

b. The retail sale of services where one service that is provided is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

c. The transaction includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. To be considered de minimis, the seller's purchase price or sales price of the taxable products must be 10 percent or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

d. The retail sale of exempt tangible personal property and taxable tangible personal property where: (i) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies, and (ii) the seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible property. Sellers may not use a

combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

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

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

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. Qualifies as a CSP and, as an agent, contractually agrees to perform all of the sales and use tax functions required under this chapter for another dealer, except to remit use tax on such other dealer's own purchases.

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

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

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

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

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

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

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

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

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

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

10. Makes sales into the Commonwealth and such dealer's registration is allowed under federal law; or

11. Volunteers under the terms of the Agreement to register and collect the tax imposed by this chapter either on his own behalf or through an agent that qualifies as a CSP.

D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration

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

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

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

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

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

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

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

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

§ 58.1-612.1. Online registration system.

The Department of Taxation shall participate in an online sales and use tax registration system in cooperation with the states that are members of the Agreement. Registrants of this system agree to collect and remit sales and use taxes for all taxable sales into all member states, including those states joining after the seller's registration. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state. Registrants may cancel registration under the system at any time under uniform procedures adopted by the Governing Board. Cancellation shall not relieve the seller of its liability for remitting to the proper states any taxes collected.

If the Commonwealth of Virginia withdraws or is expelled from the Streamlined Sales and Use Tax Agreement, the state will not be permitted to use registration with the central registration system and the collection of sales and use taxes in the Commonwealth as a factor in determining whether the seller has nexus with the Commonwealth for any tax at any time.

§ 58.1-613. Dealers' certificates of registration.

A. Every person desiring to engage in or conduct business as a dealer in this Commonwealth shall file with the Tax Commissioner or the local commissioner of the revenue, if the local commissioner elects to provide the services authorized under this section, an application for a certificate of registration ~~for each place of business in this Commonwealth~~ *and complete the online registration process set forth under the Agreement*.

B. Every application for a certificate of registration *filed with the Tax Commissioner or local commissioner of the revenue* shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the Tax Commissioner may require.

C. When the required application has been made, the Tax Commissioner shall issue to each applicant a separate certificate of registration for each place of business within this Commonwealth. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

D. Whenever any person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Tax Commissioner, upon hearing after giving such person 10 days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by registered mail directed to the last known address of such person.

E. Any person who engages in business as a dealer in this Commonwealth without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked, and each officer of any corporation which so engages in business shall be guilty of a Class 2 misdemeanor. Each day's continuance in business in violation of this section shall constitute a separate offense.

F. If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate shall thereupon expire, and such holder shall inform the Tax Commissioner in writing within 30 days after he has ceased to conduct such business at such place that he has so ceased. If the holder of a certificate of registration desires to change his place of business to another place in this Commonwealth, he shall so inform the Tax Commissioner in writing and his certificate shall be revised accordingly. The holder of a certificate of registration alternatively may complete the transactions required under this subsection with any local commissioner of the revenue electing to provide the services authorized under this section.

G. This section shall also apply to any person who engages in the business of furnishing any of the things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only for the collection of the use tax.

H. At the request of a local commissioner of revenue, the Tax Commissioner shall provide, on a quarterly basis, a listing of new businesses in the locality which obtained a certificate of registration.

I. A commissioner of the revenue electing to provide the services authorized under this section shall follow the guidelines, rules, or procedures set forth by the Tax Commissioner for providing such services and shall provide the Tax Commissioner on a quarterly basis a list of each certificate of registration he has issued or revised.

§ 58.1-615. (Contingent expiration date) Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or ~~cost~~ *purchase* price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

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

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

B. [Expired.]

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

D. Every dealer who elects to file a consolidated sales tax return for any taxable period and who is

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

E. The Tax Commissioner shall make available to all sellers, whether or not registered under the Agreement, except modular building manufacturers and modular building retailers, a simplified return that is filed electronically.

1. The simplified electronic return (hereinafter SER) shall be in a form approved by the governing board of the Agreement and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and Part 2 shall contain information relating to exempt sales. The Department shall require submission of the Part 2 information and shall notify the governing board of such requirement. However, a Model 4 seller that is not required to register pursuant to the provisions of this chapter shall not be required to submit the Part 2 information.

2. Sales and use tax returns shall be required as follows:

a. CSPs shall file a SER in the Commonwealth on behalf of Model 1 sellers. CSPs, on behalf of such sellers, shall file Part 1 of the SER each month. A Model 1 seller may file both Part 1 and the Part 2 of the SER.

b. Model 2 and Model 3 sellers shall file a SER every month unless they have indicated in writing that they anticipate making no sales in the Commonwealth. Model 2 and Model 3 sellers shall file Part 1 of the SER each month. Part 2 information shall be submitted by (i) filing Part 2 of the SER together with Part 1 of the SER every month or (ii) filing Part 2 of the SER at the same time Part 1 of the SER for the month of December is due. Part 2 information filed pursuant to clause (ii) shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

c. Model 4 sellers may file a SER. Such sellers shall file Part 1 of the SER every month. Model 4 sellers filing a SER shall have the same options available to Model 2 and Model 3 sellers for submitting Part 2 information but shall be subject to the same conditions.

Model 4 sellers that elect not to file a SER shall file returns in the form and pursuant to schedules afforded to dealers not registered under the Agreement by the Tax Commissioner.

d. Sellers not registered under the Agreement but that are registered in the Commonwealth may file a SER. Such sellers shall file Part 1 of the SER every month. Such sellers filing a SER shall have the same options available to Model 2 and Model 3 sellers for submitting Part 2 information but shall be subject to the same conditions.

3. An exemption from submitting Part 2 information may be granted under terms and conditions established by the Department.

4. Any seller not registered under the Agreement but registered in the Commonwealth and any Model 4 seller that has elected to file a SER shall give at least three months' written notice of its intent to discontinue filing a SER.

E. The Commonwealth shall not require the filing of a return from a seller that is registered under the Agreement that has indicated at the time of registration that it anticipates making no sales that would be sourced to the Commonwealth under the Agreement. However, a seller shall lose such exemption upon making any taxable sale into the Commonwealth and shall file a return in the month following such sale.

F. The Commonwealth shall adopt a standardized transmission process to allow for receipt of uniform tax returns and other formatted information as approved by the governing board of the Agreement. Such a process shall provide for the filing of separate returns for multiple legal entities in a single transmission and shall not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process shall allow a CSP, a tax preparer, or any other person authorized to do so, to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.

§ 58.1-615. (Contingent effective date) Returns by dealers.

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

remote seller, single provider, or consolidated provider subject to the sales or use tax.

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

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

B. [Expired.]

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

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

E. The Tax Commissioner shall make available to all sellers, whether or not registered under the Agreement, except modular building manufacturers and modular building retailers, a simplified return that is filed electronically.

1. The simplified electronic return (hereinafter SER) shall be in a form approved by the governing board of the Agreement and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and Part 2 shall contain information relating to exempt sales. The Department shall require submission of the Part 2 information and shall notify the governing board of such requirement. However, a Model 4 seller that is not required to register pursuant to the provisions of this chapter shall not be required to submit the Part 2 information.

2. Sales and use tax returns shall be required as follows:

a. CSPs shall file a SER in the Commonwealth on behalf of Model 1 sellers. CSPs, on behalf of such sellers, shall file Part 1 of the SER each month. A Model 1 seller may file both Part 1 and the Part 2 of the SER.

b. Model 2 and Model 3 sellers shall file a SER every month unless they have indicated in writing that they anticipate making no sales in the Commonwealth. Model 2 and Model 3 sellers shall file Part 1 of the SER each month. Part 2 information shall be submitted by (i) filing Part 2 of the SER together with Part 1 of the SER every month or (ii) filing Part 2 of the SER at the same time Part 1 of the SER for the month of December is due. Part 2 information filed pursuant to clause (ii) shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

c. Model 4 sellers may file a SER. Such sellers shall file Part 1 of the SER every month. Model 4 sellers filing a SER shall have the same options available to Model 2 and Model 3 sellers for submitting Part 2 information but shall be subject to the same conditions.

Model 4 sellers that elect not to file a SER shall file returns in the form and pursuant to schedules afforded to dealers not registered under the Agreement by the Tax Commissioner.

d. Sellers not registered under the Agreement but that are registered in the Commonwealth may file a SER. Such sellers shall file Part 1 of the SER every month. Such sellers filing a SER shall have the same options available to Model 2 and Model 3 sellers for submitting Part 2 information but shall be subject to the same conditions.

3. An exemption from submitting Part 2 information may be granted under terms and conditions established by the Department.

4. Any seller not registered under the Agreement but registered in the Commonwealth and any Model 4 seller that has elected to file a SER shall give at least three months' written notice of its intent to discontinue filing a SER.

E. The Commonwealth shall not require the filing of a return from a seller that is registered under the Agreement that has indicated at the time of registration that it anticipates making no sales that would be sourced to the Commonwealth under the Agreement. However, a seller shall lose such exemption upon making any taxable sale into the Commonwealth and shall file a return in the month following such sale.

F. The Commonwealth shall adopt a standardized transmission process to allow for receipt of uniform tax returns and other formatted information as approved by the governing board of the Agreement. Such a process shall provide for the filing of separate returns for multiple legal entities in a single transmission and shall not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process shall allow a CSP, a tax preparer, or any other person authorized to do so, to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.

§ 58.1-618. Assessment based on estimate.

A. If any dealer fails to make a return as provided by this chapter, or a return that is false or fraudulent, it shall be the duty of the Tax Commissioner to make an estimate for the taxable period of the retail sales or distributions of such dealer, or of the gross proceeds from leases of tangible personal property, or taxable services by such dealer, or the ~~cost~~ *purchase* price of all articles of tangible personal property imported by such dealer for use or consumption in the Commonwealth, or storage by such dealer of tangible personal property to be used or consumed in the Commonwealth, and assess the tax, plus such penalties as are provided in this chapter. The Tax Commissioner shall give such dealer ten days' notice in writing requiring such dealer to appear before him with such books, records, and papers as he may require relating to the business of such dealer for such taxable period. The Tax Commissioner may require such dealer or the agents and employees of such dealer to give testimony or to answer interrogatories under oath administered by the Tax Commissioner respecting such sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services, or the failure to make a return thereof as provided in this chapter. If any dealer fails to make any such return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of such investigation, the Tax Commissioner is hereby authorized to make the assessment based upon such information as may be available to him and to issue a memorandum of lien under § 58.1-1805 for the collection of any such taxes and penalties so found to be due. The assessment so made shall be deemed prima facie correct.

B. If the dealer has imported tangible personal property and fails to produce an invoice showing the sales price of the articles, or the invoice does not reflect the true or actual sales price as defined in this chapter, then the Tax Commissioner shall ascertain, in any manner feasible, the true sales price and assess and collect the tax, with penalties, to the extent such have accrued, on the true sales price as ascertained by him. The assessment so made shall be deemed prima facie correct.

C. In the case of the lease of tangible personal property, if the consideration given or reported by the dealer, in the judgment of the Tax Commissioner, does not represent the true or actual consideration, then the Tax Commissioner is authorized to fix the same and assess and collect the tax thereon in the same manner as above provided, with penalties to the extent such have accrued. The assessment so made shall be deemed prima facie correct.

§ 58.1-621. Bad debts.

A. In any return filed under the provisions of this chapter, the dealer may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts which are owed to the dealer and which have been ~~found to be worthless~~ *written off as uncollectible in the claimant's books and records and are eligible to be deducted for federal income tax purposes* within the period covered by the return. ~~The credit, however, shall not exceed the amount of the uncollected sales price determined by treating prior payments on each debt as consisting of the same proportion of sales price, sales tax and other nontaxable charges as in the total debt originally owed to the dealer~~ *For purposes of this subsection, a dealer who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the dealer's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the dealer was required to file a federal income tax return*. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the dealer shall be included in the ~~first~~ return filed ~~after such collection~~ *for the period in which the collection was made*.

B. *For purposes of calculating the amount of bad debt to be recovered under subsection A, a dealer shall utilize the federal definition of "bad debt" in 26 U.S.C. § 166, excluding:*

1. Financing charges or interest;

2. Sales or use taxes charged on the purchase price;

3. Uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; and

4. Expenses incurred in attempting to collect any debt, and repossessed property.

C. When the amount of bad debt exceeds the amount of taxable sales for the period in which the bad debt is written off, a refund claim may be filed under § 58.1-1823. The statute of limitation shall be measured from the due date of the return on which the bad debt could first be claimed. In the event that the dealer is a CSP acting as an agent for another dealer, such CSP must credit or refund the full

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amount of any bad debt allowance or refund received to the dealer for which he serves as agent.

D. For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

E. In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states, the Department shall authorize such allocation.

F. Notwithstanding any other provision of this section, a dealer whose volume and character of uncollectible accounts, including checks returned for insufficient funds, renders it impractical to substantiate the credit on an account-by-account basis, may, subject to the approval of the Department, utilize an alternative method of substantiating the credit.

§ 58.1-622. Discount.

A. For the purpose of compensating a dealer holding a certificate of registration under § 58.1-613 for accounting for and remitting the tax levied by this chapter, such dealer shall be allowed the following percentages of the first three percent of the tax levied by §§ 58.1-603 and 58.1-604 and accounted for in the form of a deduction in submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.

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The discount allowed by this section shall be computed according to the schedule provided, regardless of the number of certificates of registration held by a dealer.

B. In addition to the discount allowed under subsection A, the Tax Commissioner is authorized to allow a monetary allowance to Model 1, Model 2, Model 3, and Model 4 sellers for new technology necessary to facilitate the collection of sales and use taxes.

§ 58.1-623. Sales or leases presumed subject to tax; exemption certificates.

A. All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under this chapter.

B. The certificate mentioned in this section shall relieve the person who takes such certificate from any liability for the payment or collection of the tax, except upon ~~notice from~~ *the following circumstances: (i)* the Tax Commissioner *provides notice to the seller* that such certificate is no longer acceptable*; (ii) the seller fraudulently fails to collect the tax; (iii) the seller solicits purchasers to unlawfully claim exemptions; or (iv) the seller accepts exemption certificates for entity-based exemptions when the purchaser receives the exempt item using an exemption certificate that clearly indicates that the claimed exemption is not available in that state*.

~~Such~~ *C. The certificate may be either in electronic form or in paper form. In the event that the certificate is in electronic form, such certificate is not required to bear the signature of the purchaser. In the event that the certificate is in paper form, such* certificate shall be signed by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the tangible personal property sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. *The seller shall also be relieved of the tax if the seller obtains a fully completed exemption certificate within 90 days subsequent*

to the date of the sale. If an exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under § 58.1-609.11, the exemption certificate shall be valid until the scheduled expiration date stated on the exemption certificate.

D. A seller shall be relieved of all liability for taxes collected if the seller obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. For purposes of this section, a recurring business relationship exists when a period of no more than 12 months elapses between sales transactions.

~~C.~~ *E.* If a taxpayer who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding the property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, distribution, or lease, the taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the property to him.

~~D.~~ *F.* If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

§ 58.1-624.1. Direct pay authorization for direct mail.

A. Notwithstanding any other law, the provisions of this subsection shall govern the sales of advertising and promotional direct mail. Any purchaser of advertising and promotional direct mail may provide the seller with (i) a direct payment permit, (ii) an Agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized, or accepted by the Tax Commissioner), or (iii) information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients.

1. If the purchaser provides the direct payment permit or Agreement certificate (or other written statement approved, authorized or accepted by the Tax Commissioner), the dealer, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the permit, certificate, or statement applies. The purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due.

2. If the purchaser provides the dealer information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the dealer shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the dealer is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the dealer has sourced the sale according to the delivery information provided by the purchaser.

3. If the purchaser does not provide the dealer with any of the items listed in subdivision 1 or 2 of this subsection, the sale shall be sourced according to subdivision 2 d of § 58.1-606.1. No credit for tax paid shall be allowed on sales sourced pursuant to this subdivision.

B. Notwithstanding any other law, the provisions of this subsection shall govern the sales of other direct mail.

1. Except as otherwise provided in this subsection, sales of other direct mail are sourced in accordance with subdivision 2 b of § 58.1-606.1.

2. A purchaser of other direct mail may provide the seller with (i) a direct payment permit or (ii) an Agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized, or accepted by the Tax Commissioner).

3. If the purchaser provides the direct payment permit or Agreement certificate (or other written statement approved, authorized or accepted by the Tax Commissioner), the dealer, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the permit, certificate, or statement applies. Notwithstanding subdivision 1 of this subsection, the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.

C. 1. This section shall not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether advertising and promotional direct mail is included in the same mailing.

2. If a transaction is a bundled transaction that includes advertising and promotional direct mail, this section applies only if the primary purpose of the transaction is the sale of products or services that

meet the definition of advertising and promotional direct mail.

3. Nothing in this section shall limit any purchaser's (i) obligation for sales or use tax to which the direct mail is delivered, (ii) right under Virginia, federal, or constitutional law to a credit for sales or use taxes legally due and paid to other jurisdictions, or (iii) right to a refund of sales or use taxes overpaid to the Commonwealth.

D. For purposes of this section:

"Advertising and promotional direct mail" means printed material that is "direct mail", the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize or secure financial support for a product, person, business, or organization.

"Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. Other direct mail includes, but is not limited to (i) transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices; (ii) any legally required mailings including, but not limited to, privacy notices, tax reports, and stockholder reports; and (iii) other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

"Product" means tangible personal property, a product transferred electronically, or a service.

§ 58.1-625.2. Customer refund procedures.

A. If a purchaser seeks a return of over-collected sales or use taxes from a seller, a cause of action against the seller for the over-collected sales or use taxes will not accrue until the purchaser has provided written notice to the seller and the seller has had 60 days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

B. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice if, in the collection of such sales or use taxes, the seller (i) uses either a provider or a system, including a proprietary system, that is certified by the state and (ii) has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

§ 58.1-628.3. Tax computation.

A. In computing the amount of tax due pursuant to this chapter, the tax computation shall be carried to the third decimal place and the tax shall be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

B. Each dealer shall make a one-time binding election to compute the tax due on a transaction on either an item-by-item basis or on an invoice basis.

C. The procedure set out in subsection A shall be applied to the aggregated amount of state and local tax due.

§ 58.1-635. (Contingent expiration date) Failure to file return; fraudulent return; civil penalties.

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

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

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

§ 58.1-635. (Contingent effective date) Failure to file return; fraudulent return; civil penalties.

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be

added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 30 percent in the aggregate. In no case, however, shall the penalty be less than $10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

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

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

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

§ 58.1-635.1. Taxability matrix; reliance on same.

A. The Department shall develop and maintain a taxability matrix, and make such matrix available to dealers. Such matrix shall be in the form of a downloadable electronic database and shall set forth the taxable status, under this chapter, for each item or transaction listed in the matrix. The format of such matrix will be consistent with requirements set forth by the Governing Board charged with administering the Agreement. The Department shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the Governing Board.

B. In the event that an item or transaction is not contained in the matrix or absent specific guidance with respect to the taxability of an item or transaction listed in the matrix, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall apply.

C. 1. Any dealer, CSP, or purchaser that can demonstrate to the satisfaction of the Tax Commissioner that the proper amount of tax due was not collected solely because the dealer relied on incorrect data contained in the matrix required pursuant to subsection A, including the state's erroneous classification in the taxability matrix of terms included in the Library of Definitions as "taxable" or "exempt," "included in sales price" or "excluded from sales price" or "included in the definition" or "excluded from the definition," shall be relieved from the liability for the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 with respect to such incorrect data.

2. If an existing provision of the taxability matrix is amended, the Commonwealth shall, to the extent possible, relieve dealers, CSPs, and purchasers from liability for the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 with respect to such provision until the first day of the calendar month that is at least 30 days after notice of a change to the taxability matrix is submitted to the Governing Board, provided the dealer, CSP, or purchaser can demonstrate to the satisfaction of the Tax Commissioner that it relied on the prior version of the taxability matrix.

D. 1. To inform the general public of its practices regarding certain sales and use tax administration practices as selected by the Governing Board, the Department shall, to the best of its ability, maintain a tax administration practices section in its taxability matrix that explains the Department's practices with regard to those administrative items and issues selected by the Governing Board.

2. Any dealer, CSP, or purchaser that can demonstrate to the satisfaction of the Tax Commissioner that the proper amount of tax due was not collected solely because the dealer relied on incorrect data contained in the tax administration practices section of the taxability matrix shall be relieved from the liability for the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 with respect to such incorrect data.

3. If the tax administration practices section of the taxability matrix is amended, the Commonwealth shall, to the extent possible, relieve dealers, CSPs, and purchasers from liability for the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 with respect to such amendment until the first day of the calendar month that is at least 30 days after notice of a change to the tax administration practices section of the taxability matrix is submitted to the Governing Board, provided the dealer, CSP, or purchaser can demonstrate to the satisfaction of the Tax Commissioner that it relied on the prior version of the tax administration practices section.

E. The Department shall give notice in the taxability matrix, in a format approved by the Governing Board, of the products for which a tax exemption is provided during the sales tax holiday periods set forth in subdivision 18 of § 58.1-609.1 and §§ 58.1-611.2 and 58.1-611.3.

§ 58.1-635.2. Amnesty for certain registrations.

A. Any dealer who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the Commonwealth, in accordance with the terms of the Agreement, may qualify for amnesty for previously uncollected or unpaid taxes provided the dealer was not so registered in the Commonwealth in the 12-month period preceding the effective date of the Commonwealth's participation in the Agreement. Such amnesty shall preclude assessments for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the dealer was not registered in the Commonwealth, provided registration occurs within 12 months of the effective date of the Commonwealth's participation in the Agreement.

B. Amnesty shall not be available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit, and which audit is not yet finally resolved, including any related administrative and judicial processes. Amnesty shall also not be available for sales or use taxes already paid or remitted to the Commonwealth or collected by the dealer and not remitted.

C. The provisions of subsection A shall be fully effective, absent the dealer's fraud or intentional misrepresentation of a material fact, as long as the dealer continues to be registered and continues payment or collection and remittance of applicable sales or use taxes for a period of at least 36 months. The statute of limitations applicable for asserting a tax liability shall be tolled during this 36-month period.

D. The provisions of this section shall be applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

§ 58.1-637.1. Confidentiality and privacy protections under Model 1.

A. With limited exceptions, a CSP shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

B. The Governing Board may certify a CSP only if that CSP certifies that:

1. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

2. Personally identifiable information is only used and retained to the extent necessary for the administration of Model 1 with respect to exempt purchasers;

3. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official website of the CSP;

4. Its collection, use, and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

5. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

C. The Commonwealth shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

D. When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subsection B 4, such information shall no longer be retained by the Commonwealth.

E. When personally identifiable information regarding an individual is retained by or on behalf of the Commonwealth, the Commonwealth shall provide reasonable access by such individual to his or her own information in the Commonwealth's possession and a right to correct any inaccurately recorded information.

F. If anyone, other than the Commonwealth or a person authorized by the Commonwealth or the Agreement, seeks to discover personally identifiable information, the Commonwealth shall make a reasonable and timely effort to notify the individual of such request.

G. This privacy policy is subject to enforcement by Virginia's Attorney General or other appropriate state government authority.

H. The laws and regulations of the Commonwealth regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the Agreement does not enlarge or limit the Commonwealth's authority to:

1. Conduct audits or other reviews as provided under the agreement and Virginia law;

2. Provide records pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),

disclosure laws with governmental agencies, or other regulations;

3. Prevent, consistent with state law, disclosures of confidential taxpayer information;

4. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; or

5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

I. This privacy policy does not preclude the Governing Board from certifying a CSP whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the Agreement.

§ 58.1-638.2. (Contingent effective date — see note) Disposition of state and local sales tax revenue collected pursuant to federal legislation granting remote collection authority.

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

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

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

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

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

5. Notwithstanding §§ 58.1-605, 58.1-606, and 58.1-638, all remaining revenue collected pursuant to this section, as estimated by the Department, shall be transferred to the Transportation Trust Fund to be allocated pursuant to § 33.2-1526.

§ 58.1-639.1. State review and approval of CAS Software.

A. The Tax Commissioner or the representatives appointed by the Governor or the General Assembly, as set forth in subdivision C 2 of § 58.1-601, shall be required to review software submitted to the Governing Board for certification as a CAS, as defined in § 58.1-602, to determine whether the program accurately reflects the taxability of the product categories included in the program. Upon approval by the Tax Commissioner or the Virginia representatives, the state shall certify to the Governing Board its acceptance of the determination of the taxability of the product categories included in the program.

B. Any CSP or Model 2 seller that can demonstrate to the satisfaction of the Tax Commissioner that such dealer failed to charge or collect the proper amount of tax due solely to the reliance on the certification provided by the Tax Commissioner or Virginia representative shall be relieved from liability to the Commonwealth and its local jurisdictions for failure to collect sales or use taxes.

C. The Commonwealth shall not be responsible for classification of an item or transaction within the product categories certified. The relief from liability provided in this section shall not be available for a CSP or Model 2 seller that has incorrectly classified an item or transaction into a product category certified by the Tax Commissioner or Virginia representative.

D. If the Commonwealth determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the CSP or Model 2 seller of the incorrect classification. The CSP or Model 2 seller shall have 10 days to revise the classification after receipt of notice from the member state of the determination. Upon expiration of the 10 days, the CSP or Model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

§ 58.1-639.2. Tax Commissioner's duties.

In addition to the duties set forth under § 58.1-202, the Tax Commissioner is hereby authorized to represent the Commonwealth in administrative matters before the Governing Board charged with

administering the Agreement. As such, the Tax Commissioner's duties include:

1. Filing the petition for membership;

2. Completing and signing the certificate of compliance, as necessary;

3. Preparing the annual certification for membership and presenting such recertification to the Governing Board on or before August 1 of each year after the year of the Commonwealth's entry; and

4. Representing the Commonwealth before the Governing Board in all matters related to the application of the Agreement to the provisions of this chapter.

For purposes of this section, the Commonwealth is in compliance with the Agreement if the effect of the Commonwealth's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.

2. That the seventh enactment of Chapter 766 of the Acts of Assembly of 2013 is amended and reenacted as follows:

7. That the provisions of this act amending §§ 58.1-601, 58.1-602, ~~58.1-605,~~ ~~58.1-606,~~ 58.1-612, as it is currently effective and as it may become effective, 58.1-615, 58.1-625, as it is currently effective and as it may become effective, 58.1-635, 58.1-638.2, and subdivision 5 of § 58.1-604, and repealing § 58.1-609.13, shall not become effective unless the federal government enacts legislation that grants states that meet minimum simplification requirements specified in such legislation the authority to compel remote retailers to collect sales and use tax on sales made into the respective state. If the federal government enacts such legislation, then such amendments and the repeal of § 58.1-609.13 shall become effective 30 days after the effective date of the federal legislation.

3. That §§ 58.1-604.6, 58.1-605, as it may become effective, 58.1-606, as it may become effective, and 58.1-628.2 of the Code of Virginia are repealed effective July 1, 2017.

4. That the provisions of this act shall become effective on July 1, 2017.