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SENATE BILL NO. 1186

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 58.1-602, as it is currently effective and as it may become effective, and 58.1-2403 of the Code of Virginia, relating to taxation of all-terrain vehicles, mopeds, and off-road motorcycles.

 Patron—Dance

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-602, as it is currently effective and as it may become effective, and 58.1-2403 of the Code of Virginia are amended and reenacted as follows:

§ 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.

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

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

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

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

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

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

INTRODUCED

SB1186

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

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

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

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

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

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

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

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

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

105 "Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of
106 the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all
107 applicable motor vehicle sales and use taxes have been paid. ~~"Motor vehicle" does not include any~~
108 ~~all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. The taxes under this~~
109 ~~chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles,~~
110 ~~mopeds, and off-road motorcycles.~~

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

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

119 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,
120 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,

auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

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

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

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

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

182 conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local
183 property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity
184 added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory
185 gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such
186 mandatory gratuity or service charge does not exceed 20% of the price of the meal. Where used articles
187 are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used
188 articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the
189 new or used articles and the credit for the used articles.

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

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

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

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

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

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

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

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

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

232 **§ 58.1-602. (Contingent effective date) Definitions.**

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

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

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

243 "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with

the object of gain, benefit or advantage, either directly or indirectly.

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

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

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

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

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

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

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

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

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

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

323 "Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of
324 the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all
325 applicable motor vehicle sales and use taxes have been paid. ~~"Motor vehicle" does not include any~~
326 ~~all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. The taxes under this~~
327 ~~chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles,~~
328 ~~mopeds, and off-road motorcycles.~~

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

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

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

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

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

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

354 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
355 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90
356 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
357 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
358 a consideration; (ii) sales of tangible personal property to persons for resale when because of the
359 operation of the business, or its very nature, or the lack of a place of business in which to display a
360 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
361 adequate records, or because such persons are minors or transients, or because such persons are engaged
362 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
363 lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge
364 made for automotive refinish repair materials that are permanently applied to or affixed to a motor
365 vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or
366 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.

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

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

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

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible

personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

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

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

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

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

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

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

§ 58.1-2403. Exemptions.

No tax shall be imposed as provided in § 58.1-2402 if the vehicle is:

1. Sold to or used by the United States government or any governmental agency thereof;
2. Sold to or used by the Commonwealth of Virginia or any political subdivision thereof;
3. Registered in the name of a volunteer fire department or volunteer emergency medical services agency not operated for profit;
4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth living on the tribal reservation;
5. Transferred incidental to repossession under a recorded lien and ownership is transferred to the lienholder;
6. A manufactured home permanently attached to real estate and included in the sale of real estate;
7. A gift to the spouse, son, daughter, or parent of the transferor. With the exception of a gift to a spouse, this exemption shall not apply to any unpaid obligation assumed by the transferee incidental to the transfer;
8. Transferred from an individual or partnership to a corporation or limited liability company or from a corporation or limited liability company to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation or limited liability company in which the individual or partnership holds the majority interest;
9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent corporation to a wholly owned subsidiary;
10. Being registered for the first time in the Commonwealth and the applicant holds a valid, assignable title or registration issued to him by another state or a branch of the United States Armed Forces and (i) has owned the vehicle for longer than 12 months or (ii) has owned the vehicle for less than 12 months and provides evidence of a sales tax paid to another state. However, when a vehicle has been purchased by the applicant within the last 12 months and the applicant is unable to provide evidence of a sales tax paid to another state, the applicant shall pay the Virginia sales tax based on the fair market value of the vehicle at the time of registration in Virginia;
11. a. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale; or
b. Titled in the name of an automotive manufacturer having its headquarters in Virginia, except for any commercially leased vehicle that is not described under subdivision 3 of § 46.2-602.2. For purposes of this subdivision, "automotive manufacturer" and "headquarters" means the same as such terms are defined in § 46.2-602.2;
12. A motor vehicle having seats for more than seven passengers and sold to an urban or suburban bus line the majority of whose passengers use the buses for traveling a distance of less than 40 miles, one way, on the same day;
13. Purchased in the Commonwealth by a nonresident and a Virginia title is issued for the sole

purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than Virginia;

14. A motor vehicle designed for the transportation of 10 or more passengers, purchased by and for the use of a church conducted not for profit;

15. Loaned or leased to a private nonprofit institution of learning, for the sole purpose of use in the instruction of driver's education when such education is a part of such school's curriculum for full-time students;

16. Sold to an insurance company or local government group self-insurance pool, created pursuant to § 15.2-2703, for the sole purpose of disposition when such company or pool has paid the registered owner of such vehicle a total loss claim;

17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, their employees or agents, and members of their families, if such persons are nationals of the state by which they are appointed and are not citizens of the United States;

18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the United States Internal Revenue Code;

19. A motor vehicle having seats for more than seven passengers and sold to a restricted common carrier or common carrier of passengers;

20. Beginning July 1, 1989, a self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, sold to, rented to, or used by a nonprofit hospital, or a cooperative hospital service organization as described in § 501(e) of the United States Internal Revenue Code, or a nonprofit corporation as defined in § 501(c)(3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments;

21. Transferred, as a gift or through a sale to an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code, provided the motor vehicle is not titled and tagged for use by such organization;

22. A motor vehicle sold to an organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and which is organized for the primary purpose of distributing food, clothing, medicines, and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world;

23. Transferred to the trustees of a revocable inter vivos trust, when the individual titleholder of a Virginia titled motor vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries of the trust may also be named in the trust instrument, when no consideration has passed between the titleholder and the beneficiaries; and transferred to the original titleholder from the trustees holding title to the motor vehicle;

24. Transferred to trustees of a revocable inter vivos trust, when the owners of the vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case;

25. Sold by a vehicle's lessor to its lessee upon the expiration of the term of the vehicle's lease, if the lessee is a natural person and this natural person has paid the tax levied pursuant to this chapter with respect to the vehicle when he leased it from the lessor, and if the lessee presents an original copy of the lease upon request of the Department of Motor Vehicles or other evidence that the sales tax has been paid to the Commonwealth by the lessee purchasing the vehicle;

26. Titled in the name of a deceased person and transferred to the spouse or heir, or under the will, of such deceased person;

~~27. An all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. Such all-terrain vehicles, mopeds, or off-road motorcycles shall not be deemed a motor vehicle or other vehicle subject to the tax imposed under this chapter; or~~

28. 27. A motor vehicle that is sold to an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code and that is primarily used by the organization to transport to markets for sale produce that is (i) produced by local farmers and (ii) sold by such farmers to the organization.