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**SENATE BILL NO. 390**

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend and reenact §§ 58.1-320, 58.1-339.8, 58.1-400, 58.1-439.21, 58.1-439.26, 58.1-602, as it is currently effective and as it may become effective, 58.1-603, as it is currently effective and as it may become effective, 58.1-609.5, 58.1-611.1, 58.1-612, 58.1-623, 58.1-901, 58.1-902, 58.1-905, 58.1-1001, 58.1-1021.02, 58.1-3819, 58.1-3819.1, 58.1-3820, 58.1-3821, 58.1-3823, 58.1-3824, 58.1-3825, 58.1-3825.2, 58.1-3825.3, 58.1-3826, 58.1-3842, and 58.1-3843 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 38 of Title 58.1 a section numbered 58.1-3818.8, relating to taxation in the Commonwealth.*

Patron—Marsden

Referred to Committee on Finance

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

1. That §§ 58.1-320, 58.1-339.8, 58.1-400, 58.1-439.21, 58.1-439.26, 58.1-602, as it is currently effective and as it may become effective, 58.1-603, as it is currently effective and as it may become effective, 58.1-609.5, 58.1-611.1, 58.1-612, 58.1-623, 58.1-901, 58.1-902, 58.1-905, 58.1-1001, 58.1-1021.02, 58.1-3819, 58.1-3819.1, 58.1-3820, 58.1-3821, 58.1-3823, 58.1-3824, 58.1-3825, 58.1-3825.2, 58.1-3825.3, 58.1-3826, 58.1-3842, and 58.1-3843 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 38 of Title 58.1 a section numbered 58.1-3818.8 as follows:

**§ 58.1-320. Imposition of tax.**

A. A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual as follows:

1. Two percent on income not exceeding \$3,000;
2. Three percent on income in excess of \$3,000, but not in excess of \$5,000;
- Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning before January 1, 1987;
- Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;
- Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;
- Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989;
3. Five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning on and after January 1, 1990;
- Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before January 1, 1987;
- Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;
- Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;
- Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989; and
4. Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990, through December 31, 2017;
- Five and three-quarters percent on income in excess of \$17,000 but not in excess of \$500,000 for taxable years beginning on and after January 1, 2018;
5. Six and one-quarter percent on income in excess of \$500,000 but not in excess of \$1 million for taxable years beginning on and after January 1, 2018; and
6. Six and three-quarters percent on income in excess of \$1 million for taxable years beginning on and after January 1, 2018.

B. For taxable years beginning on and after January 1, 2019, the \$1 million brackets set forth in subdivisions A 5 and 6 shall be adjusted by an amount equal to the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), for all items, from September 1 through August 31 for the year immediately preceding the affected taxable year.

**§ 58.1-339.8. Income tax credit for low-income taxpayers.**

INTRODUCED

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59 A. As used in this section, unless the context requires otherwise:

60 "Family Virginia adjusted gross income" means the combined Virginia adjusted gross income of an  
61 individual, the individual's spouse, and any person claimed as a dependent on the individual's or his  
62 spouse's income tax return for the taxable year.

63 "Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of  
64 Columbia updated annually in the Federal Register by the U.S. Department of Health and Human  
65 Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

66 "Virginia adjusted gross income" has the same meaning as the term is defined in § 58.1-321.

67 B. 1. For taxable years beginning on and after January 1, 2000, any individual or persons filing a  
68 joint return whose family Virginia adjusted gross income does not exceed 100 percent of the poverty  
69 guideline amount corresponding to a household of an equal number of persons as listed in the poverty  
70 guidelines published during such taxable year, shall be allowed a *refundable* credit against the tax levied  
71 pursuant to § 58.1-320 in an amount equal to \$300 each for the individual, the individual's spouse, and  
72 any person claimed as a dependent on the individual's or married persons' income tax return for the  
73 taxable year. For any taxable year in which a husband and wife file separate Virginia income tax  
74 returns, the credit provided under this section shall be allowed against the tax for only one of such two  
75 tax returns. Additionally, the credit provided under this section shall not be allowed against such tax of  
76 a dependent of the individual or of married persons.

77 2. For taxable years beginning on and after January 1, 2006, any individual or married persons,  
78 eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu  
79 of the credit authorized under subdivision B 1, claim a *refundable* credit against the tax imposed  
80 pursuant to § 58.1-320 in an amount equal to 20 percent of the credit claimed by the individual or  
81 married persons for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for  
82 the taxable year. In no case shall a household be allowed a credit pursuant to this subdivision and  
83 subdivision B 1 for the same taxable year.

84 For purpose of this subdivision, "household" means an individual and in the case of married persons,  
85 the individual and his spouse regardless of whether or not the individual and his spouse file combined  
86 or separate Virginia individual income tax returns.

87 C. ~~The amount of the credit provided pursuant to subsection B for any taxable year shall not exceed~~  
88 ~~the individual's or married persons' Virginia income tax liability.~~

89 D. Notwithstanding any other provision of this section, no credit shall be allowed pursuant to  
90 subsection B in any taxable year in which the individual, the individual's spouse, or both, or any person  
91 claimed as a dependent on such individual's or married persons' income tax return, claims one or any  
92 combination of the following on his or their income tax return for such taxable year:

93 1. The subtraction under subdivision 8 of § 58.1-322.02;

94 2. The subtraction under subdivision 15 of § 58.1-322.02;

95 3. The subtraction under subdivision 16 of § 58.1-322.02;

96 4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision  
97 2 b of § 58.1-322.03; or

98 5. The deduction under subdivision 5 of § 58.1-322.03.

99 **§ 58.1-400. Imposition of tax.**

100 A tax ~~at the rate of six percent~~ is hereby annually imposed on the Virginia taxable income for each  
101 taxable year of every corporation organized under the laws of the Commonwealth and every foreign  
102 corporation having income from Virginia sources, *as follows*:

103 *A rate of six percent for taxable years beginning before January 1, 2018; and*

104 *A rate of five percent for taxable years beginning on and after January 1, 2018.*

105 **§ 58.1-439.21. Tax credit; amount; limitation; carry over.**

106 A. The Superintendent of Public Instruction and the Commissioner of Social Services shall certify to  
107 the Department of Taxation, or in the case of business firms subject to a tax under Article 1  
108 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, to the State  
109 Corporation Commission, the applicability of the tax credit provided herein for a business firm.

110 B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ 58.1-320  
111 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et  
112 seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, in  
113 an amount equal to 65 percent of the value of the money, property, professional services, and  
114 contracting services donated by the business firm during its taxable year to neighborhood organizations  
115 for programs approved pursuant to § 58.1-439.20. Notwithstanding any other law and for purposes of  
116 this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as  
117 determined for federal income tax purposes using the laws and regulations of the United States relating  
118 to federal income taxes. No tax credit shall be granted for any donation made in the taxable year with a  
119 value of less than \$616.

120 A business firm shall be eligible for a tax credit under this section only to the extent that sufficient

tax credits allocated to the neighborhood organization for an approved project are available. Notwithstanding that this section establishes a tax credit of 65 percent of the value of the qualified donation, a business firm may by written agreement accept a lesser tax credit percentage from a neighborhood organization for any otherwise qualified donation it has made. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

*Notwithstanding any other provision of law, for taxable years beginning on and after January 1, 2017, if a taxpayer claims a tax credit pursuant to this section for a qualified donation, such donation shall not also be eligible as a deduction as a charitable contribution for purposes of calculating the taxpayer's Virginia taxable income.*

C. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the type and value of the donation received, the business firm making the donation, and the tax credit percentage to be used in determining the amount of the tax credit. The certification shall also include any written agreement under which a business firm accepts a tax credit of less than 65 percent for a donation.

**§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.**

A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1, 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 65 percent of the value of the monetary or marketable securities donation made by the person to a scholarship foundation included on the list published annually by the Department of Education in accordance with the provisions of § 58.1-439.28.

No tax credit shall be allowed under this article if the value of the monetary or marketable securities donation made by an individual is less than \$500. In addition, tax credits shall be issued only for the first \$125,000 in value of donations made by the individual during the taxable year. The maximum aggregate donations of \$125,000 for the taxable year for which tax credits may be issued and the minimum required donation of \$500 shall apply on an individual basis. Such limitation on the maximum amount of tax credits issued to an individual shall not apply to credits issued to any business entity, including a sole proprietorship.

*Notwithstanding any other provision of law, for taxable years beginning on and after January 1, 2017, if a taxpayer claims a tax credit pursuant to this section for a donation, such donation shall not also be eligible for deduction as a charitable contribution for purposes of calculating the taxpayer's Virginia taxable income.*

B. Tax credits shall be issued to persons making monetary or marketable securities donations to scholarship foundations by the Department of Education on a first-come, first-served basis in accordance with procedures established by the Department of Education under the following conditions:

1. The total amount of tax credits that may be issued each fiscal year under this article shall not exceed \$25 million.

2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. In a form approved by the Department of Education, the person seeking to make a monetary or marketable securities donation to a scholarship foundation or a scholarship foundation on behalf of such person shall request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The Department of Education's preauthorization notice shall accompany the monetary or

182 marketable securities donation from the person to the scholarship foundation, which shall, within 40  
183 days, return the notice to the Department of Education certifying the value and type of donation and  
184 date received. Upon receipt and approval by the Department of Education of the preauthorization notice  
185 with required supporting documentation and certification of the value and type of the donation by the  
186 scholarship foundation, the Superintendent of Public Instruction shall as soon as practicable, and in no  
187 case longer than 30 days, issue a tax credit certificate to the person eligible for the tax credit. The  
188 person shall attach the tax credit certificate to the applicable tax return filed with the Department of  
189 Taxation or the State Corporation Commission, as applicable. The Department of Education shall  
190 provide a copy of the tax credit certificate to the scholarship foundation.

191 Preauthorization notices not acted upon by a donor within 180 days of issuance shall be void. No tax  
192 credit shall be approved by the Department of Education for activities that are a part of a person's  
193 normal course of business.

194 **§ 58.1-602. (Contingent expiration date) Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

238 *"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental*  
239 *of tangible personal property or for furnishing taxable services, computed with the same deductions,*  
240 *where applicable, as for sales price as defined in this section over the term of the lease, rental, service,*  
241 *or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying*  
242 *charges, service charges, or interest from credit extended on the lease or rental of tangible personal*  
243 *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 *taxable 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 *taxable services or* tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to *taxable services or* 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.

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

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

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

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

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

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of a *taxable service or* tangible personal property ~~or services taxable under this chapter~~, and ~~shall include~~ *includes* 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 terms "retail sale" and a "sale at retail" also shall specifically include the separately stated charge made for supplies used during automotive repairs whether or not there is transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for resale.

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

*In the case of the "retail sale" of any accommodations in which an accommodations intermediary facilitates the sale, the accommodations intermediary shall be deemed under this chapter as a dealer making a retail sale of an accommodation. The accommodations intermediary shall collect the retail sales and use taxes imposed in accordance with this chapter, computed on the room charge, and shall*

(a) elect to remit the portion of such taxes that relate to the accommodations fee to either the Department or the accommodations provider and shall remit the same in accordance with its election and shall be liable for the same and (b) remit the portion of such taxes that relate to the discount room charge to the accommodations provider and shall be liable for the same. If the accommodations intermediary pursuant to clause (a) elects to remit the taxes relating to the accommodations fee to the accommodations provider, then the accommodations intermediary shall include with any such remittance to the accommodations provider a writing that reports each individual room charge for which the taxes that relate to the accommodations fee are being remitted.

An accommodations intermediary shall not be liable for retail sales and use taxes remitted to an accommodations provider but that are not then remitted to the Department by the accommodations provider. In the case of the "retail sale" of any accommodations in which an accommodations intermediary facilitates the sale, an accommodations provider shall be liable for that portion of retail sales and use taxes that relates to the discount room charge only to the extent that the accommodations intermediary has remitted such taxes to the accommodations provider. However, if the accommodations provider does not promptly cease doing business with the accommodations intermediary at such time that the accommodations intermediary refuses or fails to remit to the accommodations provider that portion of the retail sales and use tax that relates to the discount room charge, thereafter the accommodations provider shall be liable for the full amount of such taxes that relates to the discount room charge. An accommodations provider shall be liable for that portion of retail sales and use taxes that relates to an accommodations fee only to the extent that the accommodations intermediary has remitted such taxes to the accommodations provider.

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

In any "retail sale" of any accommodations, the accommodations provider shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to (1) the total charges charged to the transient by the accommodations provider or (2) the discount room charge billed to the accommodations intermediary, as applicable. In any "retail sale" of any accommodations, the accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the person renting the accommodations to the accommodations intermediary, recoverable at law in the same manner as other debts.

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) (A) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) (B) 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.

"Room charge" means the full retail price charged to the customer by the accommodations intermediary for the use of the accommodations, including any accommodations fee before taxes. The room charge shall be determined in accordance with 23VAC10-210-730 and the related rulings of the Department on the same.

"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 taxable services or tangible personal property or services are sold, including any taxable 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.

*"Streamed" means a method of transmitting or receiving video and audio data over a computer network as a steady, continuous flow, allowing playback to proceed while subsequent data is being received.*

"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, *and (iii) digital products downloaded from or streamed over the Internet, including digital audio and audiovisual products, books, applications, and computer programs.*

*"Taxable service" means any of the following services used or consumed in the Commonwealth:*

*1. Carpet, rug, and upholstery cleaning and dyeing, whether such carpet, rug, or upholstery is new or used;*

*2. Garment alteration, maintenance, modification, or repair;*

*3. Hair care, including hairdressing, grooming, coloring, cutting, or styling;*

*4. Landscaping, whether commercial or residential, including the activity of arranging or modifying areas of land and natural scenery for an improved or aesthetic effect; the addition, removal, or arrangement of natural forms, features, and plantings; the addition, removal, or modification of retaining walls, ponds, sprinkler systems, or other landscape construction services; and other services provided by landscape designers or landscape architects such as consultation, research, studies, specifications, supervision, or preparation of general or specific design or detail plans, or any other professional services or functions associated with landscaping;*

*5. Laundering, dry cleaning, or pressing of any kind of clothing, but not if such services are performed by means of self-service, coin-operated equipment, and not including the rental of clothing to commercial users when the essential part of the rental includes the recurring service of laundering or cleaning of the clothing;*

*6. Nail care, including coloring, manicuring, pedicuring, and polishing;*

*7. Pest control or extermination;*

*8. Pet care, including boarding, grooming, kenneling, pet sitting, training, walking, and the performance of veterinary medicine;*

*9. Piercing, tattooing, and other cosmetic body modifications not required for medical reasons; and*

*10. Spa services, including body scrubs, body wraps, exfoliation, facials, and massages.*

*For purposes of taxing taxable services, the Department shall assert the Commonwealth's*

*jurisdictional nexus with taxpayers to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. "Taxable service" does not include any service otherwise exempt under this chapter.*

"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 requires a different meaning:

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

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

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

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

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

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

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

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

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account 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.

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

"Distribution" means the transfer or delivery of a taxable service or tangible personal property for

551 use, consumption, or storage by the distributee, and the use, consumption, or storage of a *taxable*  
552 *service* or tangible personal property by a person who has processed, manufactured, refined, or  
553 converted such *taxable service* or *tangible personal* property, but does not include the transfer or  
554 delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt  
555 under this chapter.

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

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

569 "Import" and "imported" are words applicable to *taxable services* or tangible personal property  
570 imported into the Commonwealth from other states as well as from foreign countries, and "export" and  
571 "exported" are words applicable to *taxable services* or tangible personal property exported from the  
572 Commonwealth to other states as well as to foreign countries.

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

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

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

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

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

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

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

604 "Modular building" means, but shall not be limited to, single and multifamily houses, apartment  
605 units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are  
606 intended to become real property, primarily constructed at a location other than the permanent site, built  
607 to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the  
608 Virginia Department of Housing and Community Development, and shipped with most permanent  
609 components in place to the site of final assembly. For purposes of this chapter, a modular building shall  
610 not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and  
611 certified under the provisions of the National Manufactured Housing Construction and Safety Standards  
612 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 a *taxable service or* tangible personal property not *provided*, held, or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

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

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

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

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

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of a *taxable service or* tangible personal property ~~or services taxable under this chapter~~, and ~~shall include~~ *includes* 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 terms "retail sale" and a "sale at retail" also shall specifically include the separately stated charge made for supplies used during automotive repairs whether or not there is transfer of title or possession of the supplies and whether or not the supplies are

674 attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the  
675 customer of such repair services shall be deemed a sale for resale.

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

681 *In the case of the "retail sale" of any accommodations in which an accommodations intermediary*  
682 *facilitates the sale, the accommodations intermediary shall be deemed under this chapter as a dealer*  
683 *making a retail sale of an accommodation. The accommodations intermediary shall collect the retail*  
684 *sales and use taxes imposed in accordance with this chapter, computed on the room charge, and shall*  
685 *(a) elect to remit the portion of such taxes that relate to the accommodations fee to either the*  
686 *Department or the accommodations provider and shall remit the same in accordance with its election*  
687 *and shall be liable for the same and (b) remit the portion of such taxes that relate to the discount room*  
688 *charge to the accommodations provider and shall be liable for the same. If the accommodations*  
689 *intermediary pursuant to clause (a) elects to remit the taxes relating to the accommodations fee to the*  
690 *accommodations provider, then the accommodations intermediary shall include with any such remittance*  
691 *to the accommodations provider a writing that reports each individual room charge for which the taxes*  
692 *that relate to the accommodations fee are being remitted.*

693 *An accommodations intermediary shall not be liable for retail sales and use taxes remitted to an*  
694 *accommodations provider but that are not then remitted to the Department by the accommodations*  
695 *provider. In the case of the "retail sale" of any accommodations in which an accommodations*  
696 *intermediary facilitates the sale, an accommodations provider shall be liable for that portion of retail*  
697 *sales and use taxes that relates to the discount room charge only to the extent that the accommodations*  
698 *intermediary has remitted such taxes to the accommodations provider. However, if the accommodations*  
699 *provider does not promptly cease doing business with the accommodations intermediary at such time*  
700 *that the accommodations intermediary refuses or fails to remit to the accommodations provider that*  
701 *portion of the retail sales and use tax that relates to the discount room charge, thereafter the*  
702 *accommodations provider shall be liable for the full amount of such taxes that relates to the discount*  
703 *room charge. An accommodations provider shall be liable for that portion of retail sales and use taxes*  
704 *that relates to an accommodations fee only to the extent that the accommodations intermediary has*  
705 *remitted such taxes to the accommodations provider.*

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

710 *In any "retail sale" of any accommodations, the accommodations provider shall separately state the*  
711 *amount of the tax on the bill, invoice, or similar documentation and shall add the tax to (1) the total*  
712 *charges charged to the transient by the accommodations provider or (2) the discount room charge billed*  
713 *to the accommodation intermediary, as applicable. In any "retail sale" of any accommodations, the*  
714 *accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar*  
715 *documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the*  
716 *person renting the accommodations to the accommodations intermediary, recoverable at law in the same*  
717 *manner as other debts.*

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

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

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

731 *"Room charge" means the full retail price charged to the customer by the accommodations*  
732 *intermediary for the use of the accommodations, including any accommodations fee before taxes. The*  
733 *room charge shall be determined in accordance with 23VAC10-210-730 and the related rulings of the*  
734 *Department on the same.*

735 *"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 *taxable services or* tangible personal property ~~or services are~~ is sold, including any *taxable* 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.

"Streamed" means a method of transmitting or receiving video and audio data over a computer network as a steady, continuous flow, allowing playback to proceed while subsequent data is being received.

"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, ~~and~~ (iii) digital products downloaded from or streamed over the Internet, including digital audio and audiovisual products, books, applications, and computer programs.

"Taxable service" means any of the following services used or consumed in the Commonwealth:

1. Carpet, rug, and upholstery cleaning and dyeing, whether such carpet, rug, or upholstery is new or used;
2. Garment alteration, maintenance, modification, or repair;
3. Hair care, including hairdressing, grooming, coloring, cutting, or styling;
4. Landscaping, whether commercial or residential, including the activity of arranging or modifying areas of land and natural scenery for an improved or aesthetic effect; the addition, removal, or arrangement of natural forms, features, and plantings; the addition, removal, or modification of retaining walls, ponds, sprinkler systems, or other landscape construction services; and other services provided by landscape designers or landscape architects such as consultation, research, studies, specifications, supervision, or preparation of general or specific design or detail plans, or any other professional services or functions associated with landscaping;

797 5. *Laundrying, dry cleaning, or pressing of any kind of clothing, but not if such services are*  
 798 *performed by means of self-service, coin-operated equipment, and not including the rental of clothing to*  
 799 *commercial users when the essential part of the rental includes the recurring service of laundrying or*  
 800 *cleaning of the clothing;*

801 6. *Nail care, including coloring, manicuring, pedicuring, and polishing;*

802 7. *Pest control or extermination;*

803 8. *Pet care, including boarding, grooming, kenneling, pet sitting, training, walking, and the*  
 804 *performance of veterinary medicine;*

805 9. *Piercing, tattooing, and other cosmetic body modifications not required for medical reasons; and*

806 10. *Spa services, including body scrubs, body wraps, exfoliation, facials, and massages.*

807 *For purposes of taxing taxable services, the Department shall assert the Commonwealth's*  
 808 *jurisdictional nexus with taxpayers to the maximum extent permitted under the Constitutions of Virginia*  
 809 *and the United States and federal law. "Taxable service" does not include any service otherwise exempt*  
 810 *under this chapter.*

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

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

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

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

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

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

835 **§ 58.1-603. (Contingent expiration date) Imposition of sales tax.**

836 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now  
 837 imposed by law, a license or privilege tax upon every person who engages in the business of selling at  
 838 retail ~~or, distributing, leasing, renting, or furnishing taxable services or~~ tangible personal property in this  
 839 Commonwealth, ~~or who rents or furnishes any of the things or services taxable under this chapter,~~ or  
 840 who stores for use or consumption in this Commonwealth any item or article of tangible personal  
 841 property as defined in this chapter; ~~or who leases or rents such property within this Commonwealth,~~ in  
 842 the amount of 4.3 percent:

843 1. Of the gross sales price of each *taxable service or* item or article of tangible personal property  
 844 when sold at retail ~~or, distributed, or furnished~~ in this Commonwealth.

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

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

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

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

853 **§ 58.1-603. (Contingent effective date) Imposition of sales tax.**

854 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now  
 855 imposed by law, a license or privilege tax upon every person who engages in the business of selling at  
 856 retail ~~or, distributing, leasing, renting, or furnishing taxable services or~~ tangible personal property in this  
 857 Commonwealth, ~~or who rents or furnishes any of the things or services taxable under this chapter,~~ or  
 858 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 *taxable service or* item or article of tangible personal property when sold at retail ~~or, distributed, or furnished~~ in this Commonwealth.

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

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

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

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

**§ 58.1-609.5. 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; *however, such exemption shall not include garment alteration, maintenance, modification, or repair.*

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.~~ 5. An amount separately charged for labor or services rendered in connection with the modification of prewritten programs as defined in § 58.1-602.

~~7.~~ 6. Custom programs as defined in § 58.1-602.

~~8.~~ 7. 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.~~ 8. 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.

**§ 58.1-611.1. 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, *but before July 1, 2018*, 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.

2. *On and after July 1, 2018, the tax rate on such food shall be zero percent.*

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 the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. 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

920 such retail establishment for immediate consumption on or off the premises of the retail establishment  
921 constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not  
922 limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises  
923 of that retail establishment. For purposes of this section, "retail establishment" means each place of  
924 business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a  
925 certificate of registration pursuant to § 58.1-613.

926 **§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.**

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

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

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

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

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

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

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

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

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

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

952 9. *Is an accommodations intermediary facilitating the sale of an accommodation located in the*  
953 *Commonwealth.*

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

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

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

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

963 4. Makes regular deliveries of tangible personal property within this Commonwealth by means other  
964 than common carrier *or furnishes services valued at \$5,000 or more during a calendar year.* A person  
965 shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a  
966 common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods  
967 sold by him;

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

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

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

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

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

10. *Is an accommodations intermediary that regularly facilitates the sale of an accommodation located in the Commonwealth.*

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

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

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

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

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

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

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

G. (Contingent effective date) 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.

**§ 58.1-623. 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, or distribution, of *taxable services or tangible personal property* or the 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. However, the sale or distribution of cigarettes shall be subject to the provisions of § 58.1-623.2 and require a cigarette exemption certificate issued pursuant to § 58.1-623.2.

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 Tax Commissioner that such certificate is no longer acceptable. 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 *taxable service or 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. 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

1043 scheduled expiration date stated on the exemption certificate.

1044 C. If a taxpayer who gives a certificate under this section makes any use of the *taxable service or*  
1045 *tangible personal* property other than an exempt use or retention, demonstration, or display while  
1046 holding the property for resale, distribution, or lease in the regular course of business, such use shall be  
1047 deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and  
1048 the cost of the property *or service* to him shall be deemed the sales price of such retail sale. If the sole  
1049 use of the property *or service* other than retention, demonstration, or display in the regular course of  
1050 business is the rental of the property *or service* while holding it for sale, distribution, or lease, the  
1051 taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the  
1052 property *or service* to him.

1053 D. If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods  
1054 and thereafter commingles these goods with other fungible goods not so purchased, but of such  
1055 similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales  
1056 or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the  
1057 goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so  
1058 commingled has been sold or distributed.

1059 E. If a taxpayer fails to give the dealer at the time of purchase an exemption certificate previously  
1060 issued by the Department, no interest shall be paid on a subsequent refund claim for any period prior to  
1061 the date the taxpayer makes a complete refund claim with the Department. This subsection shall not  
1062 apply to transactions exempted under self-executing certificates of exemption not issued to a specific  
1063 taxpayer by the Department.

1064 **§ 58.1-901. Definitions.**

1065 As used in this chapter, unless the context clearly shows otherwise, ~~the term or phrase:~~

1066 "Decedent" means a deceased person.

1067 "Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011  
1068 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision,  
1069 in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full  
1070 advantage of such credit as the laws of the United States may allow. *For deaths occurring on and after*  
1071 *July 1, 2018, however, in no event shall such maximum amount be less than the federal credit allowable*  
1072 *by § 2011 of the Internal Revenue Code as it existed on January 1, 1978.*

1073 "Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code  
1074 of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

1075 "Interest in a closely held business" means an "interest in a closely held business" as defined in  
1076 § 6166 of the Internal Revenue Code of 1986, as amended or renumbered, or the successor provision of  
1077 the laws of the United States.

1078 "Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his  
1079 death.

1080 "Personal representative" means the personal representative of the estate of the decedent, appointed,  
1081 qualified and acting within the Commonwealth, or, if there is no personal representative appointed,  
1082 qualified and acting within the Commonwealth, then any person in actual or constructive possession of  
1083 the Virginia gross estate of the decedent.

1084 "Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

1085 "State" means any state, territory or possession of the United States and the District of Columbia.

1086 "Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue  
1087 Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

1088 "Value" means "value" as finally determined for federal estate tax purposes under the laws of the  
1089 United States relating to federal estate taxes.

1090 "Working farm" means an interest in a closely held business that operates as an active trade or  
1091 business for agricultural purposes.

1092 Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes  
1093 means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other  
1094 provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be  
1095 or become effective at any time or from time to time. *If any such provision is repealed and no*  
1096 *successor is enacted, then the reference to such provision in this chapter shall be given the meaning of*  
1097 *such provision as it existed immediately prior to its repeal.*

1098 **§ 58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident**  
1099 **defined.**

1100 A. A tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every  
1101 resident, subject, where applicable, to the credit provided for in subsection B. *However, for deaths*  
1102 *occurring on and after July 1, 2018, no tax shall be imposed on a gross estate if the majority of the*  
1103 *assets of the total estate are interests in a closely held business or working farm.*

1104 B. If the real and tangible personal property of a resident is located outside of the Commonwealth

and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be credited with the lesser of:

1. The amount of the death tax paid the other state and credited against the federal estate tax; or
2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such other state or states and the denominator of which is the value of the decedent's gross estate.

C. Property of a resident includes:

1. Real property situated in the Commonwealth of Virginia;
2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and
3. Intangible personal property owned by the resident regardless of where it is located.

**§ 58.1-905. Filing returns; payment of tax due thereon.**

A. 1. The personal representative of every estate subject to the tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the Department, on or before the date the federal estate tax return is required to be filed; (i) a return for the tax due under this chapter; and (ii) a copy of the federal estate tax return.

2. *If the personal representative of any estate subject to the tax imposed by this chapter is not required by the laws of the United States to file a federal estate tax return, then the personal representative shall file with the Department a return for the tax due under this chapter within the 270 days immediately following the death of the decedent.*

B. 1. If the personal representative has obtained an extension of time for filing the federal estate tax return or paying the federal estate tax or any portion thereof, the filing required by ~~subsection A subdivision A 1~~ or payment required by subsection C shall be similarly extended until the end of the time period granted in the federal extension. Upon obtaining an extension of time for filing the federal estate tax return, or paying the federal estate tax or any portion thereof, the personal representative shall provide the Department with a true copy of the instrument providing for this extension.

2. *For personal representatives described under subdivision A 2, the Department may grant an extension of time for filing the state estate tax return or remitting to the Department the tax due pursuant to this chapter, or any portion of the tax due. The Department shall establish procedures and conditions for such extension.*

C. The tax due under this chapter shall be paid by the personal representative to the Department not later than the date specified under subsection A or B. If such tax is paid pursuant to subsection B, interest, at a rate equal to the rate of interest established pursuant to § 58.1-15, shall be added for the period between the date when such tax would have been due had no extension been granted and the date of full payment.

D. Notwithstanding any other provision of this section, the extensions provided to individual taxpayers under subdivisions 1 and 2 of subsections F and G of § 58.1-344 shall be applicable in the same manner to the tax imposed by this chapter.

**§ 58.1-1001. Tax levied; rate.**

A. Except as provided in subsection B, in addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of ~~one and one-quarter mills \$0.35 on each such cigarette sold, stored or received before August 1, 2004; an excise tax of one cent on each such cigarette sold, stored or received on and after August 1, 2004, through midnight on June 30, 2005; and an excise tax of 1.5 cents on each such cigarette sold, stored or received on and after July 1, 2005.~~

B. In addition to all other taxes now imposed by law, every person within the Commonwealth who sells, stores, or receives roll-your-own tobacco, for the purpose of distribution within the Commonwealth, shall pay to the Commonwealth a cigarette excise tax at the rate of ~~10%~~ 23 percent of the manufacturer's sales price of such roll-your-own tobacco.

C. The revenues generated by the taxes imposed under this section on and after August 1, 2004, shall be collected by the Department and deposited into the Virginia Health Care Fund established under § 32.1-366.

D. The provisions of this section shall not apply to members of federal, state, county, city, or town law-enforcement agencies when possession of unstamped cigarettes is necessary in the performance of investigatory duties.

**§ 58.1-1021.02. Tax on tobacco products.**

A. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon the privilege of selling or dealing in tobacco products in the Commonwealth by any person engaged in

business as a distributor thereof, at the following rates:

1. Upon each package of moist snuff, at the rate of \$0.18 per ounce with a proportionate tax at the same rate on all fractional parts of an ounce. The tax shall be computed based on the net weight as listed by the manufacturer on the package in accordance with federal law.

2. For purposes of the tax under this article, loose leaf tobacco shall be classified as loose leaf tobacco single-units, loose leaf tobacco half pound-units, and loose leaf tobacco pound-units. Such tax shall be imposed on the distributor for loose leaf tobacco as follows:

a. ~~\$0.21~~ \$0.49 for each loose leaf tobacco single-unit;

b. ~~\$0.40~~ \$0.93 for each loose leaf tobacco half pound-unit;

c. ~~\$0.70~~ \$1.63 for each loose leaf tobacco pound-unit; and

d. For any other unit, pouch, or package of loose leaf tobacco, the tax shall be by net weight and shall be ~~\$0.21~~ \$0.49 per unit, pouch, or package plus ~~\$0.21~~ \$0.49 for each increment of 4 *four* ounces or portion thereof that the loose leaf tobacco exceeds 16 ounces.

The tax for each unit, pouch, or package of loose leaf tobacco shall be in accordance with the provisions of subdivisions a. through d. only and regardless of sales price.

3. Upon tobacco products other than moist snuff or loose leaf tobacco, at the rate of ~~40~~ 23 percent of the manufacturer's sales price of such tobacco products.

Such tax shall be imposed at the time the distributor (i) brings or causes to be brought into the Commonwealth from outside the Commonwealth tobacco products for sale; (ii) makes, manufactures, or fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) ships or transports tobacco products to retailers in the Commonwealth to be sold by those retailers. It is the intent and purpose of this article that the distributor who first possesses the tobacco product subject to this tax in the Commonwealth shall be the distributor liable for the tax. It is further the intent and purpose of this article to impose the tax once, and only once on all tobacco products for sale in the Commonwealth.

B. No tax shall be imposed pursuant to this section upon tobacco products not within the taxing power of the Commonwealth under the Commerce Clause of the United States Constitution.

C. A distributor that calculates and pays the tax pursuant to subdivision A 1 or A 2 in good faith reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that such weight information was incorrect.

#### **§ 58.1-3818.8. Definitions.**

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

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

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

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

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

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

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

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

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

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

A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. *The tax shall be imposed on the total price paid by the ultimate consumer for the use or possession of the room or space occupied in a retail sale.* Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied total price paid by the ultimate consumer for the use or possession of the room or space occupied in a retail sale; however, Accomack County, Albemarle County, Alleghany County, Amherst County, Augusta County, Bedford County, Bland County, Botetourt County, Brunswick County, Campbell County, Caroline County, Carroll County, Craig County, Cumberland County, Dickenson

County, Dinwiddie County, Floyd County, Franklin County, Frederick County, Giles County, Gloucester County, Goochland County, Grayson County, Greene County, Greensville County, Halifax County, Highland County, Isle of Wight County, James City County, King George County, Loudoun County, Madison County, Mecklenburg County, Montgomery County, Nelson County, Northampton County, Page County, Patrick County, Powhatan County, Prince Edward County, Prince George County, Prince William County, Pulaski County, Rockbridge County, Russell County, Smyth County, Spotsylvania County, Stafford County, Tazewell County, Warren County, Washington County, Wise County, Wythe County, and York County may levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with the local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality. If any locality has enacted an additional transient occupancy tax pursuant to subsection C of § 58.1-3823, then the governing body of the locality shall be deemed to have complied with the requirement that it consult with local tourism industry organizations, including lodging properties. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

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

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

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

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

#### **§ 58.1-3819.1. Transient occupancy tax; Roanoke County.**

1. Notwithstanding any other provision of law, general or special, and in lieu of any authority to impose a transient occupancy tax in any other provision of law, general or special, Roanoke County may impose a total transient occupancy tax not to exceed seven percent of the ~~amount of the charge for the occupancy of any room or space occupied or for the occupancy of any overnight guest room total price paid by the ultimate consumer for the use or possession of any room, space, or overnight guest room occupied in a retail sale.~~ The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

2. The revenue generated and collected from the two percent tax rate increase shall be designated and expended solely for advertising the Roanoke metropolitan area as an overnight tourist destination by members of the Roanoke Valley Convention and Visitors Bureau. For purposes of this subsection, "advertising the Roanoke metropolitan area as an overnight tourism destination" means advertising that is intended to attract visitors from a sufficient distance so as to require an overnight stay.

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

Notwithstanding the provisions of Chapter 443, as amended, of the Acts of Assembly of 1970 carried by reference in the Code of Virginia as § 58.1-3819, beginning on and after July 1, 1977, Arlington County is authorized to levy the transient occupancy tax permitted in § 58.1-3819 in an amount not to exceed five percent of the ~~amount of the charge for the occupancy of any room or space occupied total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale,~~ provided that the county's local license tax as permitted in § 58.1-3703, as amended, on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than ~~thirty~~ 30 consecutive days, on and after January 1, 1978, shall not exceed one percent of the gross receipts of such hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than ~~thirty~~ 30 consecutive days. For purposes of this section, a corporation or partnership shall be deemed an individual or group unless provided otherwise by local ordinance. For purposes of exercising the authority granted by this section, those ordinances enacted by Arlington County on October 26, 1991, and December 7, 1991, are validated as to their application, prospectively only, from the date of their

1289 enactment. The remaining provisions of § 58.1-3819 shall apply mutatis mutandis to the provisions of  
1290 this section.

1291 **§ 58.1-3821. Transient occupancy tax on certain rentals.**

1292 The County of Franklin and the County of Nelson may, by ordinance, levy a transient occupancy tax  
1293 on condominiums, apartments, townhouses, or like buildings when rooms or units in such buildings are  
1294 rented for occupancy for fewer than ~~thirty~~ 30 days at a time. The tax imposed hereunder shall not apply  
1295 to rooms or units rented for continuous occupancy by the same individual or group for ~~thirty~~ 30 or more  
1296 days in condominiums, apartments, townhouses, or like buildings.

1297 Such tax shall be in an amount and on such terms as the governing body, by ordinance, may  
1298 prescribe; however, in the County of Franklin such tax shall not exceed two percent of the ~~amount of~~  
1299 ~~charge for the occupancy of any room or space occupied total price paid by the ultimate consumer for~~  
1300 ~~the use or possession of the room or unit occupied in a retail sale~~ and in the County of Nelson such tax  
1301 shall not exceed 5% ~~five percent of the amount of charge for the occupancy of any room or space~~  
1302 ~~occupied total price paid by the ultimate consumer for the use or possession of the room or unit~~  
1303 ~~occupied in a retail sale~~. Any revenue collected in Nelson County from that portion of the tax which  
1304 exceeds 2% ~~two percent~~, shall be designated and spent for promoting tourism, travel, or business that  
1305 generates tourism or travel in the county. Any county which imposes the tax authorized in this section  
1306 may allow the businesses collecting, accounting for, and remitting such consumer tax a commission for  
1307 such service in the form of a deduction from the tax remitted. The commission amount shall be  
1308 established by ordinance; however, the maximum commission payable shall not exceed five percent of  
1309 the amount of tax due and accounted for nor be less than a minimum of three percent of the amount of  
1310 tax due. No commission shall be allowed if the amount due was delinquent.

1311 **§ 58.1-3823. Additional transient occupancy tax for certain counties.**

1312 A. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through  
1313 58.1-3821, Hanover County, Chesterfield County and Henrico County may impose:

1314 1. An additional transient occupancy tax not to exceed four percent of the ~~amount of the charge for~~  
1315 ~~the occupancy of any room or space occupied total price paid by the ultimate consumer for the use or~~  
1316 ~~possession of any room or space occupied in a retail sale~~. The tax imposed hereunder shall not apply to  
1317 rooms or spaces rented and continuously occupied by the same individual or same group of individuals  
1318 for 30 or more days. The revenues collected from the additional tax shall be designated and spent for  
1319 promoting tourism, travel or business that generates tourism or travel in the Richmond metropolitan  
1320 area; and

1321 2. An additional transient occupancy tax not to exceed two percent of the ~~amount of the charge for~~  
1322 ~~the occupancy of any room or space occupied total price paid by the ultimate consumer for the use or~~  
1323 ~~possession of any room or space occupied in a retail sale~~. The tax imposed hereunder shall not apply to  
1324 rooms or spaces rented and continuously occupied by the same individual or same group of individuals  
1325 for 30 or more days. The revenues collected from the additional tax shall be designated and spent for  
1326 expanding the Richmond Centre, a convention and exhibition facility in the City of Richmond.

1327 3. An additional transient occupancy tax not to exceed one percent of the ~~amount of the charge for~~  
1328 ~~the occupancy of any room or space occupied total price paid by the ultimate consumer for the use or~~  
1329 ~~possession of any room or space occupied in a retail sale~~. The tax imposed hereunder shall not apply to  
1330 rooms or spaces rented and continuously occupied by the same individual or group of individuals for 30  
1331 or more days. The revenues collected from the additional tax shall be designated and spent for the  
1332 development and improvement of the Virginia Performing Arts Foundation's facilities in Richmond, for  
1333 promoting the use of the Richmond Centre and for promoting tourism, travel or business that generates  
1334 tourism and travel in the Richmond metropolitan area.

1335 B. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through  
1336 58.1-3821, any county with the county manager plan of government may impose an additional transient  
1337 occupancy tax not to exceed two percent of the ~~amount of the charge for the occupancy of any room or~~  
1338 ~~space occupied total price paid by the ultimate consumer for the use or possession of any room or~~  
1339 ~~space occupied in a retail sale~~, provided the county's governing body approves the construction of a  
1340 county conference center. The tax imposed hereunder shall not apply to rooms or spaces rented and  
1341 continuously occupied by the same individual or same group of individuals for 30 or more days. The  
1342 revenues collected from the additional tax shall be designated and spent for the design, construction,  
1343 debt payment, and operation of such conference center.

1344 C. 1. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through  
1345 58.1-3821, the Counties of James City and York may impose an additional transient occupancy tax ~~for~~  
1346 ~~the use or possession of any overnight guest room in an amount not to exceed \$2 per room per night~~  
1347 ~~for the occupancy of any overnight guest room~~. The revenues collected from the additional tax shall be  
1348 designated and expended solely for advertising the Historic Triangle area, which includes all of the City  
1349 of Williamsburg and the Counties of James City and York, as an overnight tourism destination by the  
1350 members of the Williamsburg Area Destination Marketing Committee of the Greater Williamsburg

Chamber and Tourism Alliance. The tax imposed by this subsection shall not apply to travel campground sites or to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

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

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

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

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

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

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

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

D. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, Bedford County may impose an additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

The revenues collected from the additional tax shall be designated and spent solely for tourism and travel; marketing of tourism; or initiatives that, as determined after consultation with local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality.

E. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through 58.1-3822, Botetourt County may impose an additional transient occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.

The revenue generated and collected from the two percent tax rate increase shall be designated and expended solely for advertising the Roanoke metropolitan area as an overnight tourist destination by members of the Roanoke Valley Convention and Visitors Bureau. For purposes of this subsection, "advertising the Roanoke metropolitan area as an overnight tourism destination" means advertising that is intended to attract visitors from a sufficient distance so as to require an overnight stay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1474 parks and recreation, and information centers that attract travelers to the locality and generate tourism  
1475 revenues in the locality.

1476 C. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied  
1477 by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding  
1478 houses, travel campgrounds, and other facilities offering guest rooms.

1479 D. If Bath County requires local hotel and motel businesses, or any class thereof, to collect, account  
1480 for, and remit the tax imposed pursuant to this section, the County may allow such businesses a  
1481 commission for such service in the form of a deduction from the tax remitted. Such commission shall be  
1482 provided for by ordinance, which shall set the rate thereof, no less than three percent and not to exceed  
1483 five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount  
1484 due is delinquent.

1485 E. All tax collections pursuant to this section shall be deemed to be held in trust for Bath County.

1486 **§ 58.1-3825.3. Additional transient occupancy tax in Arlington County.**

1487 In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 and 58.1-3820,  
1488 beginning July 1, 2016, and ending July 1, 2018, Arlington County may impose an additional transient  
1489 occupancy tax not to exceed one-fourth of one percent of the ~~amount of the charge for the occupancy of~~  
1490 ~~any room or space occupied~~ *total price paid by the ultimate consumer for the use or possession of any*  
1491 *room or space occupied in a retail sale.* The revenues collected from the additional tax shall be  
1492 designated and spent for the purpose of promoting tourism and business travel in the county.

1493 **§ 58.1-3826. Scope of transient occupancy tax.**

1494 A. The transient occupancy tax imposed pursuant to the authority of this article shall be imposed  
1495 only for the ~~occupancy~~ *use or possession* of any room or space that is suitable or intended for  
1496 occupancy by transients for dwelling, lodging, or sleeping purposes.

1497 B. *In the case of any retail sale of any accommodations made by an accommodations provider and*  
1498 *in which an accommodations intermediary does not facilitate the sale of the accommodation, the*  
1499 *accommodations provider shall collect the tax imposed pursuant to this article, computed on the total*  
1500 *price paid for the use or possession of the accommodations as determined in accordance with*  
1501 *23VAC10-210-730, and shall remit the same to the locality and shall be liable for the same.*

1502 *In the case of the retail sale of any accommodations in which an accommodations intermediary*  
1503 *facilitates the sale, the accommodations intermediary shall be deemed under this article as a facility*  
1504 *making a retail sale of an accommodation. The accommodations intermediary shall collect the tax*  
1505 *imposed pursuant to this article, computed on the room charge, and shall (i) elect to remit the portion*  
1506 *of such tax that relates to the accommodations fee to either the locality or the accommodations provider*  
1507 *and shall remit the same in accordance with its election and shall be liable for the same and (ii) remit*  
1508 *the portion of such tax that relates to the discount charge to the accommodations provider and shall be*  
1509 *liable for the same. If the accommodations intermediary pursuant to clause (i) elects to remit the taxes*  
1510 *relating to the accommodations fee to the accommodations provider, then the accommodations*  
1511 *intermediary shall include with any such remittance to the accommodations provider a writing that*  
1512 *reports each individual room charge for which the taxes that relate to the accommodations fee are*  
1513 *being remitted.*

1514 *An accommodations intermediary shall not be liable for taxes under this article remitted to an*  
1515 *accommodations provider but that are then not remitted to the locality by the accommodations provider.*  
1516 *In the case of the retail sale of any accommodations in which an accommodations intermediary*  
1517 *facilitates the sale, an accommodations provider shall be liable for that portion of the taxes under this*  
1518 *article that relate to the discount charge only to the extent that the accommodations intermediary has*  
1519 *remitted such taxes to the accommodations provider. However, if the accommodations provider does not*  
1520 *promptly cease doing business with the accommodations intermediary at such time that the*  
1521 *accommodations intermediary refuses or fails to remit to the accommodations provider that portion of*  
1522 *the taxes under this article that relate to the discount charge, thereafter the accommodations provider*  
1523 *shall be liable for the full amount of the taxes under this article that relates to the discount charge. An*  
1524 *accommodations provider shall be liable for that portion of the taxes under this article that relates to*  
1525 *an accommodations fee only to the extent that the accommodations intermediary has remitted such taxes*  
1526 *to the accommodations provider.*

1527 *In any retail sale of any accommodations, the accommodations provider shall separately state the*  
1528 *amount of the tax in the bill, invoice, or similar documentation and shall add the tax to (a) the total*  
1529 *price paid for the use or possession of the accommodations in cases in which an accommodations*  
1530 *intermediary does not facilitate the sale of the accommodations or (b) the discount charge billed to the*  
1531 *accommodations intermediary, as applicable. In any retail sale of any accommodations, the*  
1532 *accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar*  
1533 *documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the*  
1534 *person renting the accommodations to the accommodations intermediary, recoverable at law in the same*

1535 manner as other debts.

1536 **§ 58.1-3842. Combined transient occupancy and food and beverage tax.**

1537 A. Rappahannock County and Madison County, by duly adopted ordinance, are hereby authorized to  
 1538 levy a tax ~~on occupancy~~ *for the use or possession of any room or space occupied* in a bed and breakfast  
 1539 establishment on which the county is authorized to levy a transient occupancy tax under § 58.1-3819 and  
 1540 on food and beverages sold for human consumption within such establishment on which the county is  
 1541 authorized to levy a food and beverage tax under § 58.1-3833, when the charges for the ~~occupancy use~~  
 1542 *or possession* of the room or space and for the sale of food and beverages are assessed in the aggregate  
 1543 and not separately stated. Such tax shall not exceed four percent of the ~~total amount charged for the~~  
 1544 ~~occupancy of the room or space occupied~~ *price paid by the ultimate consumer for the use or possession*  
 1545 *of the room or space occupied* and for the food and beverages. Such tax shall be in such amount and on  
 1546 such terms as the governing body may, by ordinance, prescribe. The tax shall be in addition to the sales  
 1547 tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.).  
 1548 Collection of such tax shall be in a manner prescribed by the governing body. All taxes collected under  
 1549 the authority of this article shall be deemed to be held in trust for the county imposing the tax.

1550 B. If a bed and breakfast establishment separately states charges for the ~~occupancy use or possession~~  
 1551 *of the room or space occupied* of the room or space and for the sale of food and beverages, a transient  
 1552 occupancy tax levied under § 58.1-3819 and a food and beverage tax levied under § 58.1-3833 shall  
 1553 apply to such separately stated charges, as applicable.

1554 C. Any tax imposed pursuant to this article shall not apply within the limits of any town located in  
 1555 such county, where such town now, or hereafter, imposes a town meals tax or a town transient  
 1556 occupancy tax on the same subject. If the governing body of any town within a county, however,  
 1557 provides that a county tax authorized by this article shall apply within the limits of such town, then such  
 1558 tax may be imposed within such towns.

1559 D. This tax shall be levied only if a food and beverage tax has been approved in a referendum  
 1560 within the county as provided by subsection A of § 58.1-3833. No county in which the levy of a food  
 1561 and beverage tax has been approved in a referendum pursuant to subsection A of § 58.1-3833 shall be  
 1562 required to submit an amendment to its meals tax ordinance or a further question to the voters in a  
 1563 referendum prior to adopting an ordinance adopting or amending the tax authorized by this article.

1564 E. Nothing herein contained shall affect any authority heretofore granted to any county to levy a  
 1565 food and beverage tax or a transient occupancy tax.

1566 **§ 58.1-3843. Scope of transient occupancy tax; collection and remittance of tax.**

1567 A. As used in this section, unless the context requires a different meaning:

1568 "Accommodations" means any room or space for which tax is imposed on the retail sale of the same  
 1569 pursuant to this article.

1570 "Accommodations fee" means the same as such term is defined in § 58.1-3818.8.

1571 "Accommodations intermediary" means the same as such term is defined in § 58.1-3818.8.

1572 "Accommodations provider" means the same as such term is defined in § 58.1-3818.8.

1573 "Discount charge" means the same as such term is defined in § 58.1-3818.8.

1574 "Retail sale" means the same as such term is defined in § 58.1-3818.8.

1575 "Room charge" means the same as such term is defined in § 58.1-3818.8.

1576 B. Notwithstanding any other provision of law, general or special, the tax imposed on transient room  
 1577 rentals pursuant to the authority of this article shall be imposed only for the ~~occupancy use or~~  
 1578 *possession* of any room or space that is suitable or intended for occupancy by transients for dwelling,  
 1579 lodging, or sleeping purposes.

1580 C. In the case of any retail sale of any accommodations made by an accommodations provider and  
 1581 in which an accommodations intermediary does not facilitate the sale of the accommodation, the  
 1582 accommodations provider shall collect the tax imposed pursuant to this article, computed on the total  
 1583 price paid for the use or possession of the accommodations as determined in accordance with  
 1584 23VAC10-210-730, and shall remit the same to the locality and shall be liable for the same.

1585 In the case of the retail sale of any accommodations in which an accommodations intermediary  
 1586 facilitates the sale, the accommodations intermediary shall be deemed under this article as a facility  
 1587 making a retail sale of an accommodation. The accommodations intermediary shall collect the tax  
 1588 imposed pursuant to this article, computed on the room charge, and shall (i) elect to remit the portion  
 1589 of such tax that relates to the accommodations fee to either the locality or the accommodations provider  
 1590 and shall remit the same in accordance with its election and shall be liable for the same and (ii) remit  
 1591 the portion of such tax that relates to the discount charge to the accommodations provider and shall be  
 1592 liable for the same. If the accommodations intermediary pursuant to clause (i) elects to remit the taxes  
 1593 relating to the accommodations fee to the accommodations provider, then the accommodations  
 1594 intermediary shall include with any such remittance to the accommodations provider a writing that  
 1595 reports each individual room charge for which the taxes that relate to the accommodations fee are  
 1596 being remitted.

*An accommodations intermediary shall not be liable for taxes under this article remitted to an accommodations provider but that are then not remitted to the locality by the accommodations provider. In the case of the retail sale of any accommodations in which an accommodations intermediary facilitates the sale, an accommodations provider shall be liable for that portion of the taxes under this article that relate to the discount charge only to the extent that the accommodations intermediary has remitted such taxes to the accommodations provider. However, if the accommodations provider does not promptly cease doing business with the accommodations intermediary at such time that the accommodations intermediary refuses or fails to remit to the accommodations provider that portion of the taxes under this article that relate to the discount charge, thereafter the accommodations provider shall be liable for the full amount of the taxes under this article that relates to the discount charge. An accommodations provider shall be liable for that portion of the taxes under this article that relates to an accommodations fee only to the extent that the accommodations intermediary has remitted such taxes to the accommodations provider.*

*In any retail sale of any accommodations, the accommodations provider shall separately state the amount of the tax in the bill, invoice, or similar documentation and shall add the tax to (a) the total price paid for the use or possession of the accommodations in cases in which an accommodations intermediary does not facilitate the sale of the accommodations or (b) the discount charge billed to the accommodations intermediary, as applicable. In any retail sale of any accommodations, the accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the person renting the accommodations to the accommodations intermediary, recoverable at law in the same manner as other debts.*

**2. That the Department of Taxation (the Department) shall calculate, by December 15, 2018, the income tax brackets pursuant to subsection B of § 58.1-320 of the Code of Virginia, as amended by this act, that will be in effect for taxable years beginning on and after January 1, 2019, but before January 1, 2020. The Department shall report the income brackets, and the percentage change from the previous year, to the Secretary of Finance and the Chairs of the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance and post such income brackets prominently on the Department's website. Thereafter, the Department shall report and post annually on December 15 the income brackets that will be in effect for the next tax year beginning on and after January 1.**

**3. That the Department of Taxation (Department) shall develop and make publicly available guidelines no later than August 1, 2018, for purposes of developing processes and procedures for implementing the amendments to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia pursuant to this act that relate to the retail sale and taxation of accommodations. The guidelines shall include, but not be limited to, provisions and procedures under which an accommodations intermediary is required to elect either the Department or the accommodations provider as the entity to which it will remit that portion of the retail sales and use and transient occupancy taxes relating to its accommodation fees. Such provisions and procedures shall provide for the communication of such election to accommodations providers. The development, issuance, and publication of the guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

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

**5. That the General Assembly shall provide funding at least equal to that provided in fiscal year 2018 in all future fiscal years, regardless of the source of such revenues.**