

18102193D

HOUSE BILL NO. 966

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend and reenact §§ 58.1-320, 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, 58.1-609.6, 58.1-611.1, 58.1-612, and 58.1-623 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to taxation in the Commonwealth; income tax, sales tax, and credit for certain local taxes.*

Patron—Davis

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-320, 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, 58.1-609.6, 58.1-611.1, 58.1-612, and 58.1-623 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13 as follows:

§ 58.1-320. Imposition of tax.

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

Two percent on income not exceeding \$3,000 *for taxable years beginning before January 1, 2019;*

Three percent on income in excess of \$3,000, but not in excess of \$5,000 *for taxable years beginning before January 1, 2019;*

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;

Five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning 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

Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990.

§ 58.1-439.12:13. Credit for certain local taxes paid by businesses.

A. *For taxable years beginning on and after January 1, 2018, and before January 1, 2023, any business shall be allowed a credit against the taxes levied pursuant to this chapter. The amount of the credit shall be equal to the aggregate of the business's tax paid, during the same taxable year for which the credit is claimed, for taxes imposed in any jurisdiction pursuant to:*

1. *Article 2 (§ 58.1-3507 et seq.) of Chapter 35;*

2. *Article 3 (§ 58.1-3509 et seq.) of Chapter 35; and*

3. *Chapter 37 (§ 58.1-3700 et seq.), but not including taxes imposed pursuant to § 58.1-3712 or 58.1-3713.*

B. *If the amount of credit allowed under this section exceeds the business's tax liability under this chapter, the excess shall constitute an overpayment, as described in § 58.1-309, and the Department shall refund such overpayment to the business. The person may not carry forward any unused credit.*

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

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

INTRODUCED

HB966

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

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

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

70 "*Business-to-business service*" means a service provided by a business to a business.

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

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

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

84 "*Educational service*" means instruction and training provided by a school, college, university, or
85 training centers.

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

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

99 "*Health care service*" means a service provided by a physician, chiropractor, dentist, nurse, nurse
100 practitioner, physician's assistant, optometrist, dental hygienist, professional counselor, clinical social
101 worker, clinical psychologist, marriage and family therapist, physical therapist, or pharmacist who is
102 licensed pursuant to Title 54.1 and who provides services within the scope of his licensure.

103 "Import" and "imported" are words applicable to *taxable services* or tangible personal property
104 imported into the Commonwealth from other states as well as from foreign countries, and "export" and
105 "exported" are words applicable to *taxable services* or tangible personal property exported from the
106 Commonwealth to other states as well as to foreign countries.

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

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

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

120 "Internet service" means a service that enables users to access proprietary and other content,

121 information electronic mail, and the Internet as part of a package of services sold to end-user
122 subscribers.

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

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

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

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

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

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

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

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

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

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

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

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

182 "Real estate service" means services involving the rental, lease, or sale of real property, whether
183 commercial, industrial, or residential; the brokering of real estate transactions; investment counseling
184 related to real estate transactions; preparing, executing, and recording documents related to real estate
185 transactions; title searches; and environmental evaluation and remediation activities related to real
186 estate.

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

193 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
194 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90
195 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
196 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
197 a consideration; (ii) sales of tangible personal property to persons for resale when because of the
198 operation of the business, or its very nature, or the lack of a place of business in which to display a
199 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
200 adequate records, or because such persons are minors or transients, or because such persons are engaged
201 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
202 lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge
203 made for automotive refinish repair materials that are permanently applied to or affixed to a motor
204 vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or
205 purchase by a provider of satellite television programming to the customer of such programming.
206 Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the
207 customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized
208 to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by
209 this chapter on the cost price of such tangible personal property to such persons and may refuse to issue
210 certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also shall
211 specifically include the separately stated charge made for supplies used during automotive repairs
212 whether or not there is transfer of title or possession of the supplies and whether or not the supplies are
213 attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the
214 customer of such repair services shall be deemed a sale for resale.

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

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

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

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

236 "Sales price" means the total amount for which ~~taxable services or~~ tangible personal property ~~or~~
237 ~~services are~~ is sold, including any ~~taxable~~ services that are a part of the sale, valued in money, whether
238 paid in money or otherwise, and includes any amount for which credit is given to the purchaser,
239 consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the
240 property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever.
241 "Sales price" shall not include (i) any cash discount allowed and taken; (ii) ~~finance charges, carrying~~
242 ~~charges, service charges or interest from credit extended on sales of tangible personal property under~~
243 ~~conditional sale contracts or other conditional contracts providing for deferred payments of the purchase~~

244 price; ~~(iii)~~ (ii) separately stated local property taxes collected; ~~(iv)~~ (iii) that portion of the amount paid
 245 by the purchaser as a discretionary gratuity added to the price of a meal; or ~~(v)~~ (iv) that portion of the
 246 amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the
 247 price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed
 248 20% percent of the price of the meal. Where used articles are taken in trade, or in a series of trades as a
 249 credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on
 250 the net difference between the sales price of the new or used articles and the credit for the used articles.

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

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

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

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

273 "*Taxable service*" means any service used or consumed in the Commonwealth. For purposes of
 274 taxing taxable services, the Department shall assert the Commonwealth's jurisdictional nexus with
 275 taxpayers to the maximum extent permitted under the Constitutions of Virginia and the United States
 276 and federal law. "*Taxable service*" does not include a business-to-business service, educational service,
 277 health care service, or real estate service.

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

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

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

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

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

298 **§ 58.1-602. (Contingent effective date) Definitions.**

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

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

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

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

311 "*Business-to-business service*" means a service provided by a business to a business.

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

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

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

325 "*Educational service*" means instruction and training provided by a school, college, university, or
326 training centers.

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

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

340 "*Health care service*" means a service provided by a physician, chiropractor, dentist, nurse, nurse
341 practitioner, physician's assistant, optometrist, dental hygienist, professional counselor, clinical social
342 worker, clinical psychologist, marriage and family therapist, physical therapist, or pharmacist who is
343 licensed pursuant to Title 54.1 and who provides services within the scope of his licensure.

344 "Import" and "imported" are words applicable to taxable services or tangible personal property
345 imported into the Commonwealth from other states as well as from foreign countries, and "export" and
346 "exported" are words applicable to taxable services or tangible personal property exported from the
347 Commonwealth to other states as well as to foreign countries.

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

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

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

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

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

366 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting

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

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

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

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

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

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

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

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

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

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

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

423 "Real estate service" means services involving the rental, lease, or sale of real property, whether
 424 commercial, industrial, or residential; the brokering of real estate transactions; investment counseling
 425 related to real estate transactions; preparing, executing, and recording documents related to real estate
 426 transactions; title searches; and environmental evaluation and remediation activities related to real
 427 estate.

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

434 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
 435 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90
 436 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
 437 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
 438 a consideration; (ii) sales of tangible personal property to persons for resale when because of the
 439 operation of the business, or its very nature, or the lack of a place of business in which to display a
 440 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
 441 adequate records, or because such persons are minors or transients, or because such persons are engaged
 442 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
 443 lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge
 444 made for automotive refinish repair materials that are permanently applied to or affixed to a motor
 445 vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or
 446 purchase by a provider of satellite television programming to the customer of such programming.
 447 Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the
 448 customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized
 449 to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by
 450 this chapter on the cost price of such tangible personal property to such persons and may refuse to issue
 451 certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also shall
 452 specifically include the separately stated charge made for supplies used during automotive repairs
 453 whether or not there is transfer of title or possession of the supplies and whether or not the supplies are
 454 attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the
 455 customer of such repair services shall be deemed a sale for resale.

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

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

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

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

477 "Sales price" means the total amount for which *taxable services or tangible personal property or*
 478 ~~services are~~ is sold, including any *taxable services* that are a part of the sale, valued in money, whether
 479 paid in money or otherwise, and includes any amount for which credit is given to the purchaser,
 480 consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the
 481 property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever.
 482 "Sales price" shall not include (i) any cash discount allowed and taken; (ii) ~~finance charges, carrying~~
 483 ~~charges, service charges or interest from credit extended on sales of tangible personal property under~~
 484 ~~conditional sale contracts or other conditional contracts providing for deferred payments of the purchase~~
 485 ~~price;~~ (iii) (ii) separately stated local property taxes collected; (iv) (iii) that portion of the amount paid
 486 by the purchaser as a discretionary gratuity added to the price of a meal; or (v) (iv) that portion of the
 487 amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the
 488 price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed
 489 20 percent of the price of the meal. Where used articles are taken in trade, or in a series of trades as a

490 credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on
491 the net difference between the sales price of the new or used articles and the credit for the used articles.

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

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

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

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

514 "*Taxable service*" means any service used or consumed in the Commonwealth. For purposes of
515 *taxing taxable services, the Department shall assert the Commonwealth's jurisdictional nexus with*
516 *taxpayers to the maximum extent permitted under the Constitutions of Virginia and the United States*
517 *and federal law. "Taxable service" does not include a business-to-business service, educational service,*
518 *health care service, or real estate service.*

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

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

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

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

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

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

543 **§ 58.1-603. (Contingent expiration date) Imposition of sales tax.**

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

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

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

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

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

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

561 **§ 58.1-603. (Contingent effective date) Imposition of sales tax.**

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

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

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

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

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

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

580 **§ 58.1-609.3. Commercial and industrial exemptions.**

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

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

587 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of
588 tangible personal property for resale where such industrial materials either enter into the production of or
589 become a component part of the finished product; (ii) industrial materials that are coated upon or
590 impregnated into the product at any stage of its being processed, manufactured, refined, or converted for
591 resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or
592 supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or
593 resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging
594 tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to
595 produce a publication described in subdivision 3 2 of § 58.1-609.6 whether it is ultimately sold at retail
596 or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or
597 replacements thereof, shall be exempt if the preponderance of their use is directly in processing,
598 manufacturing, refining, mining or converting products for sale or resale. The provisions of this
599 subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In
600 addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment,
601 or any other tangible personal property used by a public service corporation in the generation of electric
602 power, except for raw materials that are inputs to production of electricity, including fuel, or for
603 machinery, tools, and equipment used to generate energy derived from sunlight or wind. The exemption
604 for machinery, tools, and equipment used to generate energy derived from sunlight or wind shall expire
605 June 30, 2027.

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

609 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in
610 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying
611 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states
612 of the United States or its territories or possessions, or in foreign commerce between ports in the

613 Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or
614 tangible personal property used directly in the building, conversion or repair of the ships or vessels
615 covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant
616 vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used
617 exclusively or principally in interstate or foreign commerce.

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

620 6. Notwithstanding the provisions of subdivision 20 of § 58.1-609.10, all tangible personal property
621 sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier
622 providing scheduled air service on a continuing basis to one or more Virginia airports at least one day
623 per week, for use or consumption by such airline directly in the rendition of its common carrier service.

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

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

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

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

634 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
635 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
636 photocopying of products for sale or resale.

637 12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies,
638 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,
639 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of
640 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as
641 defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall
642 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a
643 usable condition consistent with commercial practices, and the gathering and transportation of raw
644 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and
645 equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their
646 use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or
647 in well area reclamation activities required by state or federal law.

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

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

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

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

674 real estate.

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

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

677 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers
 678 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter
 679 ending November 2007, for the processing, storage, retrieval, or communication of data, including but
 680 not limited to servers, routers, connections, and other enabling hardware when part of a new investment
 681 of at least \$75 million in such exempt property, when such investment results in the creation of at least
 682 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such
 683 investment was made in accordance with a memorandum of understanding with the Virginia Economic
 684 Development Partnership Authority entered into or amended between January 1, 2008, and December
 685 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to
 686 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The
 687 exemption shall not apply to any computer software sold separately from the computer equipment, nor
 688 shall it apply to general building improvements or fixtures.

689 18. Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software
 690 purchased or leased for the processing, storage, retrieval, or communication of data, including but not
 691 limited to servers, routers, connections, and other enabling hardware, including chillers and backup
 692 generators used or to be used in the operation of the equipment exempted in this paragraph, provided
 693 that such computer equipment or enabling software is purchased or leased for use in a data center that
 694 (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009,
 695 of at least \$150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs
 696 by the data center operator and the tenants of the data center, collectively, associated with the operation
 697 or maintenance of the data center provided that such jobs pay at least one and one-half times the
 698 prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new
 699 jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at
 700 least 150 percent of the average statewide unemployment rate for such year as determined by the
 701 Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies
 702 to the data center operator and the tenants of the data center if they collectively meet the requirements
 703 listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption,
 704 including a data center operator on behalf of itself and its tenants, must enter into a memorandum of
 705 understanding with the Virginia Economic Development Partnership Authority that at a minimum
 706 provides the details for determining the amount of capital investment made and the number of new jobs
 707 created, the timeline for achieving the capital investment and new job goals, the repayment obligations
 708 should those goals not be achieved, and any conditions under which repayment by the qualifying data
 709 center or data center tenant claiming the exemption may be required. In addition, the exemption shall
 710 apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement,
 711 or replace computer equipment or enabling software purchased or leased in the initial investment. The
 712 exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title
 713 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building
 714 improvements or other fixtures.

715 19. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to
 716 subdivision 1 or 2 of § 4.1-208, (i) machinery, tools, and equipment, or repair parts therefor or
 717 replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing,
 718 or conversion into beer where such materials either enter into the production of or become a component
 719 part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums,
 720 or bags for future use, for packaging the beer for shipment or sale.

721 **§ 58.1-609.5. Service exemptions.**

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

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

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

731 3. Transportation charges separately stated.

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

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

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

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

737 8.1. Business-to-business services.

738 2. Educational services.

739 3. Health care services.

740 4. Real estate services.

741 5. The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients
742 for more than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds,
743 club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to
744 transients for a consideration.

745 9. Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair or
746 replacement parts and repair labor, shall be subject to tax upon one-half of the total charge for such
747 contracts only. Persons providing maintenance pursuant to such a contract may purchase repair or
748 replacement parts under a resale certificate of exemption. Warranty plans issued by an insurance
749 company, which constitute insurance transactions, are subject to the provisions of subdivision 4 above.

750 § 58.1-609.6. Media-related exemptions.

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

753 1. Leasing, renting or licensing of copyright audio or video tapes, and films for public exhibition at
754 motion picture theaters or by licensed radio and television stations.

755 2. Broadcasting equipment and parts and accessories thereto and towers used or to be used by
756 commercial radio and television companies, wired or land based wireless cable television systems,
757 common carriers or video programmers using an open video system or other video platform provided by
758 telephone common carriers, or concerns which are under the regulation and supervision of the Federal
759 Communications Commission and amplification, transmission and distribution equipment used or to be
760 used by wired or land based wireless cable television systems, or open video systems or other video
761 systems provided by telephone common carriers.

762 3. 2. Any publication issued daily, or regularly at average intervals not exceeding three months, and
763 advertising supplements and any other printed matter ultimately distributed with or as part of such
764 publications; however, newsstand sales of the same are taxable. As used in this subdivision, the term
765 "newsstand sales" shall not include sales of back copies of publications by the publisher or his agent.

766 4. 3. Catalogs, letters, brochures, reports, and similar printed materials, except administrative
767 supplies, the envelopes, containers and labels used for packaging and mailing same, and paper furnished
768 to a printer for fabrication into such printed materials, when stored for 12 months or less in the
769 Commonwealth and distributed for use without the Commonwealth. As used in this subdivision,
770 "administrative supplies" includes, but is not limited to, letterhead, envelopes, and other stationery; and
771 invoices, billing forms, payroll forms, price lists, time cards, computer cards, and similar supplies.
772 Notwithstanding the provisions of subdivision 5 or the definition of "advertising" contained in §
773 58.1-602, (i) any advertising business located outside the Commonwealth which purchases printing from
774 a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials
775 when such purchases would have been exempt under this subdivision, and (ii) from July 1, 1995,
776 through June 30, 2002, and beginning July 1, 2002, and ending July 1, 2022, any advertising business
777 which purchases printing from a printer within the Commonwealth shall not be deemed the user or
778 consumer of the printed materials when such purchases would have been exempt under subdivision 3 or
779 this subdivision, provided that the advertising agency shall certify to the Tax Commissioner, upon
780 request, that such printed material was distributed outside the Commonwealth and such certification shall
781 be retained as a part of the transaction record and shall be subject to further review by the Tax
782 Commissioner.

783 5. Advertising as defined in § 58.1-602.

784 6. Beginning July 1, 1995, and ending July 1, 2022:

785 a. (i) The lease, rental, license, sale, other transfer, or use of any audio or video tape, film or other
786 audiovisual work where the transferee or user acquires or has acquired the work for the purpose of
787 licensing, distributing, broadcasting, commercially exhibiting or reproducing the work or using or
788 incorporating the work into another such work; (ii) the provision of production services or fabrication in
789 connection with the production of any portion of such audiovisual work, including, but not limited to,
790 scriptwriting, photography, sound, musical composition, special effects, animation, adaptation, dubbing,
791 mixing, editing, cutting and provision of production facilities or equipment; or (iii) the transfer or use of
792 tangible personal property, including, but not limited to, scripts, musical scores, storyboards, artwork,
793 film, tapes and other media, incident to the performance of such services or fabrication; however,
794 audiovisual works and incidental tangible personal property described in clauses (i) and (iii) shall be
795 subject to tax as otherwise provided in this chapter to the extent of the value of their tangible
796 components prior to their use in the production of any audiovisual work and prior to their enhancement

797 by any production service; and

798 b. ~~Equipment and parts and accessories thereto used or to be used in the production of such~~
799 ~~audiovisual works.~~

800 7. 4. Beginning July 1, 1998, and ending July 1, 2022, textbooks and other educational materials
801 withdrawn from inventory at book-publishing distribution facilities for free distribution to professors and
802 other individuals who have an educational focus.

803 **§ 58.1-610. Contractors.**

804 A. Any person who contracts orally, in writing, or by purchase order, to perform construction,
805 reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon, and
806 in connection therewith to furnish tangible personal property, shall be deemed to have purchased such
807 tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such
808 person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for
809 resale, and the dealer making the sale, distribution, or lease to or storage for such person shall be
810 obligated to collect the tax to the extent required by this chapter.

811 B. Any person who contracts to perform services in this Commonwealth and is furnished tangible
812 personal property for use under the contract by the person, or his agent or representative, for whom the
813 contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person
814 supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal
815 property so used, and shall pay a use tax based on the fair market value of the tangible personal
816 property so used, irrespective of whether or not any right, title or interest in the tangible personal
817 property becomes vested in the contractor. This subsection, however, shall not apply to the industrial
818 materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in
819 subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 1 of § 58.1-609.6;
820 the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set
821 forth in subdivision 1 of § 58.1-609.2; or the exclusion for baptistries set forth in § 58.1-609.10.

822 C. Any person who contracts orally, in writing, or by purchase order to perform any service in the
823 nature of equipment rental, and the principal part of that service is the furnishing of equipment or
824 machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or
825 use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal
826 property.

827 D. Tangible personal property incorporated in real property construction which loses its identity as
828 tangible personal property shall be deemed to be tangible personal property used or consumed within the
829 meaning of this section.

830 E. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in
831 this chapter, or the industrial materials and other industrial exclusions set out in § 58.1-609.3, the
832 exclusion for baptistries set out in § 58.1-609.10, or the partial exclusion for the sale of modular
833 buildings as set out in § 58.1-610.1, or (ii) impose any sales or use tax with respect to the use in the
834 performance of contracts with the United States, this Commonwealth, or any political subdivision
835 thereof, of tangible personal property owned by a governmental body which actually is not used or
836 consumed in the performance thereof.

837 F. Notwithstanding the other provisions of this section, any person engaged in the business of
838 furnishing and installing locks and locking devices shall be deemed a retailer of such items and not a
839 using or consuming contractor with respect to them.

840 G. Notwithstanding the other provisions of this section, any person or entity primarily engaged in the
841 business of furnishing and installing tangible personal property that provides electronic or physical
842 security on real property for the use of a financial institution, shall be deemed a retailer of such personal
843 property, including when such personal property is installed on real property not for the use of a
844 financial institution.

845 **§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.**

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

848 1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be
849 three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the
850 revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
851 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
852 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half
853 percent shall be used for general fund purposes.

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

859 3. On and after July 1, 2018, such food shall be exempt from the taxes imposed by §§ 58.1-603 and
860 58.1-604.

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

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

874 **§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

917 6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular,
918 seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or
919 marketing activities occurring in this Commonwealth or benefits from the location in this

920 Commonwealth of authorized installation, servicing, or repair facilities;

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

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

925 9. Owns tangible personal property that is for sale located in this Commonwealth, or that is rented or
926 leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to
927 consumers in this Commonwealth.

928 D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration
929 under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled
930 person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the
931 Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its
932 customers. The presumption in this subsection may be rebutted by demonstrating that the activities
933 conducted by the commonly controlled person in the Commonwealth are not significantly associated
934 with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales.
935 For purposes of this subsection, a "commonly controlled person" means any person that is a member of
936 the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of
937 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of
938 organization, bears the same ownership relationship to the dealer as a corporation that is a member of
939 the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of
940 1954, as amended or renumbered.

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

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

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

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

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

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

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

971 **§ 58.1-623. Sales or leases presumed subject to tax; exemption certificates.**

972 A. All sales or leases are subject to the tax until the contrary is established. The burden of proving
973 that a sale, or distribution, of taxable services or tangible personal property or the lease, or storage of
974 tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a
975 certificate to the effect that the property is exempt under this chapter. However, the sale or distribution
976 of cigarettes shall be subject to the provisions of § 58.1-623.2 and require a cigarette exemption
977 certificate issued pursuant to § 58.1-623.2.

978 B. The certificate mentioned in this section shall relieve the person who takes such certificate from
979 any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner
980 that such certificate is no longer acceptable. Such certificate shall be signed by and bear the name and
981 address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the

982 taxpayer; shall indicate the general character of the *taxable service or* tangible personal property sold,
983 distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption
984 certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. If an
985 exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a
986 sales and use tax exemption under § 58.1-609.11, the exemption certificate shall be valid until the
987 scheduled expiration date stated on the exemption certificate.

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

997 D. If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods
998 and thereafter commingles these goods with other fungible goods not so purchased, but of such
999 similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales
1000 or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the
1001 goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so
1002 commingled has been sold or distributed.

1003 E. If a taxpayer fails to give the dealer at the time of purchase an exemption certificate previously
1004 issued by the Department, no interest shall be paid on a subsequent refund claim for any period prior to
1005 the date the taxpayer makes a complete refund claim with the Department. This subsection shall not
1006 apply to transactions exempted under self-executing certificates of exemption not issued to a specific
1007 taxpayer by the Department.