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SENATE BILL NO. 1348

Offered January 20, 2003

A *BILL to amend and reenact §§ 58.1-320, 58.1-322, 58.1-339.8, 58.1-400, 58.1-602, 58.1-603, 58.1-609.5, 58.1-611.1, and 58.1-612 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 sections numbered 58.1-339.11 and 58.1-339.12, relating to restructuring Virginia's tax code.*

Patrons—Lucas and Reynolds

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-320, 58.1-322, 58.1-339.8, 58.1-400, 58.1-602, 58.1-603, 58.1-609.5, 58.1-611.1, and 58.1-612 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 sections numbered 58.1-339.11 and 58.1-339.12 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 *through December 31, 2002*;

Three percent on income in excess of \$3,000, but not in excess of \$5,000 *through December 31, 2002*;

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, *through December 31, 2002*;

Five percent on income not exceeding \$35,000 for taxable years beginning on and after January 1, 2003;

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, *through December 31, 2002*;

Five and three-quarters percent on income in excess of \$35,000 but not in excess of \$60,000 for taxable years beginning on and after January 1, 2003;

Six and one-half percent on income in excess of \$60,000 but not in excess of \$100,000 for taxable years beginning on and after January 1, 2003; and

Seven percent on income in excess of \$100,000 for taxable years beginning on and after January 1, 2003.

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;

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59 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
60 taxable income, on obligations or securities of any authority, commission or instrumentality of the
61 United States, which the laws of the United States exempt from federal income tax but not from state
62 income taxes;

63 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

64 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum
65 distribution allowance and any amount excludable for federal income tax purposes which is excluded
66 from federal adjusted gross income solely by virtue of an individual's election to use the averaging
67 provisions under § 402 of the Internal Revenue Code;

68 5. through 7. [Repealed.]

69 8. For taxable years beginning on and after January 1, 1990, and before January 1, 1994, any amount
70 of self-employment tax deduction under § 164 (f) of the Internal Revenue Code; and

71 9. The amount required to be included in income for the purpose of computing the partial tax on an
72 accumulation distribution pursuant to § 667 of the Internal Revenue Code.

73 C. To the extent included in federal adjusted gross income, there shall be subtracted:

74 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
75 and on obligations or securities of any authority, commission or instrumentality of the United States to
76 the extent exempt from state income taxes under the laws of the United States including, but not limited
77 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
78 interest on equipment purchase contracts, or interest on other normal business transactions.

79 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
80 or of any political subdivision or instrumentality of this Commonwealth.

81 3. [Repealed.]

82 4. Benefits received under Title II of the Social Security Act and other benefits subject to federal
83 income taxation solely pursuant to § 86 of the Internal Revenue Code.

84 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
85 under § 22 of the Internal Revenue Code by a retiree under age sixty-five who qualified for such
86 retirement on the basis of permanent and total disability and who is a qualified individual as defined in
87 § 22 (b) (2) of the Internal Revenue Code; however, any person who claims a deduction under
88 subdivision 5 of subsection D of this section may not also claim a subtraction under this subdivision.

89 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as
90 defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a
91 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under
92 this subdivision.

93 5. The amount of any refund or credit for overpayment of income taxes imposed by the
94 Commonwealth or any other taxing jurisdiction.

95 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
96 deducted for federal purposes on account of the provisions of § 280C (a) of the Internal Revenue Code.

97 7. Any amount included therein which is foreign source income as defined in § 58.1-302.

98 8. [Repealed.]

99 9. [Expired.]

100 10. Any amount included therein less than \$600 from a prize awarded by the State Lottery
101 Department.

102 11. The wages or salaries received by any person for active and inactive service in the National
103 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from thirty-nine
104 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the
105 ranks of O3 and below shall be entitled to the deductions specified herein.

106 12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for
107 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
108 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
109 perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee
110 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which
111 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

112 13. [Repealed.]

113 14. (Expires for taxable years beginning on and after January 1, 2004.) The amount of any qualified
114 agricultural contribution as determined in § 58.1-322.2.

115 15. [Repealed.]

116 16. The amounts of self-employment tax required to be added in computing Virginia taxable income
117 for taxable years beginning on and after January 1, 1990, but before January 1, 1994, pursuant to
118 subdivision B 8 of this section, as follows:

119 a. For taxable years beginning on and after January 1, 1994, and before January 1, 1995, the amount
120 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after

January 1, 1990, and before January 1, 1991;

b. For taxable years beginning on and after January 1, 1995, and before January 1, 1996, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1991, and before January 1, 1992;

c. For taxable years beginning on and after January 1, 1996, and before January 1, 1997, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1992, and before January 1, 1993;

d. For taxable years beginning on and after January 1, 1997, and before January 1, 1998, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1993, and before January 1, 1994, and any amount of self-employment tax required to be added back for taxable years beginning on and after January 1, 1990, and before January 1, 1994, which was not subtracted in those taxable years.

17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not otherwise subtracted under this subsection, earned for any month during any part of which such member performed military service in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer completes such service.

19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than thirty years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic pay for military service personnel on extended active duty for periods in excess of ninety days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

24. Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of salary for each federal and state employee whose annual salary is \$15,000 or less.

25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any

182 person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
183 Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or
184 allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18
185 of § 58.1-402.

186 28. For taxable years beginning on and after January 1, 2000, items of income attributable to,
187 derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an
188 individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other
189 consideration received by a victim or target of Nazi persecution to compensate such individual for
190 performing labor against his will under the threat of death, during World War II and its prelude and
191 direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with
192 the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II
193 and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this
194 subdivision shall only apply to an individual who was the first recipient of such items of income and
195 who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of
196 such victim.

197 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by
198 the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or
199 omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct
200 aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi
201 persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during
202 World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include
203 any individual forced into labor against his will, under the threat of death, during World War II and its
204 prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi
205 Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any
206 other neutral European country or area in Europe under the influence or threat of Nazi invasion.

207 D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

208 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
209 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
210 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
211 on such federal return and increased by an amount which, when added to the amount deducted under
212 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
213 such purposes at a rate of eighteen cents per mile; or

214 b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987;
215 \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; ~~and~~ \$5,000 for
216 married persons (one-half of such amounts in the case of a married individual filing a separate return)
217 ~~through December 31, 2002; and~~ \$3,000 for single individuals for taxable years beginning on and after
218 January 1, 1989, ~~through December 31, 2002; and~~ \$7,000 for married persons (one-half of such
219 amounts in the case of a married individual filing a separate return) for taxable years beginning on and
220 after January 1, 2003; ~~and~~ \$3,500 for single individuals for taxable years beginning on and after
221 January 1, 2003; provided that the taxpayer has not itemized deductions for the taxable year on his
222 federal income tax return. For purposes of this section, any person who may be claimed as a dependent
223 on another taxpayer's return for the taxable year may compute the deduction only with respect to earned
224 income.

225 2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through
226 December 31, 1987, ~~and~~ \$800 for taxable years beginning on and after January 1, 1988, ~~through~~
227 ~~December 31, 2002, and~~ \$2,500 for taxable years beginning on and after January 1, 2003, for each
228 personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years
229 beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the
230 Internal Revenue Code shall be entitled to an additional personal exemption.

231 b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December
232 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The
233 additional deduction for blind or aged taxpayers allowed under this subdivision and the additional
234 personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be
235 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
236 tax purposes.

237 3. A deduction equal to the amount of employment-related expenses upon which the federal credit is
238 based under § 21 of the Internal Revenue Code for expenses for household and dependent care services
239 necessary for gainful employment.

240 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under
241 permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child
242 as a personal exemption under § 151 of the Internal Revenue Code.

243 5. Effective for all taxable years beginning on or after January 1, 1996, *through December 31, 2002,*

a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four.

6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to \$2,000 per prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a savings trust account exceeds \$2,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$2,000 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained age seventy shall not be subject to the limitation that the amount of the deduction not exceed \$2,000 per prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a savings trust account, less any amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take the deduction for the full amount paid during such years, less any amounts previously deducted with respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.

8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.

9. For taxable years beginning on and after January 1, 1999, an amount equal to twenty percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. For taxable years beginning on and after January 1, 2000, the amount an individual pays annually in premiums for ~~long term~~ long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes.

E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

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

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

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

"Poverty guidelines" means the poverty guidelines for the forty-eight contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and

305 Human Services under the authority of § 673 (2) of the Omnibus Budget Reconciliation Act of 1981.

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

307 B. For taxable years beginning on and after January 1, 2000, *through December 31, 2002*, any
308 individual or persons filing a joint return whose family Virginia adjusted gross income does not exceed
309 one hundred percent of the poverty guideline amount corresponding to a household of an equal number
310 of persons as listed in the poverty guidelines published during such taxable year, shall be allowed a
311 credit against the tax levied pursuant to § 58.1-320 in an amount equal to \$300 each for the individual,
312 the individual's spouse, and any person claimed as a dependent on the individual's or married persons'
313 income tax return for the taxable year. For any taxable year in which a husband and wife file separate
314 Virginia income tax returns, the credit provided under this section shall be allowed against the tax for
315 only one of such two tax returns. Additionally, the credit provided under this section shall not be
316 allowed against such tax of a dependent of the individual or of married persons.

317 C. The amount of the credit provided pursuant to this section for any taxable year shall not exceed
318 the individual's or married persons' Virginia income tax liability.

319 D. Notwithstanding any other provision of this section, such credit shall not be allowed in any
320 taxable year in which the individual, the individual's spouse, or both, or any person claimed as a
321 dependent on such individual's or married persons' income tax return, claims one or any combination of
322 the following on his or their income tax return for such taxable year:

- 323 1. The subtraction under subdivision C 11 of § 58.1-322;
- 324 2. The subtraction under subdivision C 23 of § 58.1-322;
- 325 3. The subtraction under subdivision C 24 of § 58.1-322;
- 326 4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision
327 D 2 a of § 58.1-322; or
- 328 5. The deduction under subdivision D 5 of § 58.1-322.

329 § 58.1-339.11. *Credit for sales taxes.*

330 A. *For taxable years beginning on and after January 1, 2003, there shall be allowed to the resident*
331 *individuals qualifying under subsection C, as a credit against the taxes imposed pursuant to Article 2*
332 *(§ 58.1-320 et seq.) of Chapter 3 of this title, a sales tax credit for each personal exemption claimed on*
333 *the taxpayer's Virginia individual income tax return pursuant to subdivision D 2 a of § 58.1-322. The*
334 *credit shall not be allowable for the additional personal exemptions allowed for aged and blind*
335 *taxpayers.*

336 B. *The credit for each personal exemption claimed in the applicable taxable year shall equal \$100 if*
337 *the taxpayer's federal adjusted gross income is \$20,000 or less, \$80 if his federal adjusted gross income*
338 *is greater than \$20,000 but less than or equal to \$22,000, \$60 if his federal adjusted gross income is*
339 *greater than \$22,000 but less than or equal to \$24,000, \$40 if his federal adjusted gross income is*
340 *greater than \$24,000 but less than or equal to \$26,000, \$20 if his federal adjusted gross income is*
341 *greater than \$26,000 but less than or equal to \$28,000, and \$0 if his federal adjusted gross income is*
342 *greater than \$28,000 but less than or equal to \$30,000, and \$0 if his federal adjusted gross income is*
343 *greater than \$30,000.*

344 C. *An individual shall qualify for the credit hereunder if he is a resident of this Commonwealth and*
345 *is not an inmate of a public institution.*

346 D. *No individual who may be claimed as a personal exemption on another individual's individual*
347 *income tax return shall be entitled to such sales tax credit. If such sales tax credit is claimed on more*
348 *than one return for the same individual, the Tax Commissioner is authorized to determine the individual*
349 *entitled to claim the credit.*

350 E. *Credits to minors shall be claimed by the parent or guardian. Credit to dependents other than*
351 *minors shall be claimed by the individual entitled to claim the dependents for income tax purposes.*

352 F. *Any tax credit not used for the taxable year may be carried over for credit against the*
353 *individual's income taxes in the 5 succeeding taxable years until the total credit amount is used.*

354 G. *The credits for sales taxes allowed pursuant to this section shall be claimed on individual income*
355 *tax returns. The Tax Commissioner may exercise any of the powers available to him under this title to*
356 *assure that a claimant under this section has actually incurred and paid sales tax.*

357 H. *Any person who willfully files a false or fraudulent return in order to receive a credit under this*
358 *section shall be guilty of a Class 1 misdemeanor.*

359 § 58.1-339.12. *Virginia earned income tax credit.*

360 *For taxable years beginning on or after January 1, 2003, an individual shall be entitled to a credit*
361 *against the tax levied pursuant to § 58.1-320 in an amount equal to 20 percent of the credit allowed to*
362 *the individual in the taxable year for federal individual income taxes pursuant to § 32 of the Internal*
363 *Revenue Code.*

364 *If the amount of the credit allowed under this section exceeds the individual's income tax liability for*
365 *the taxable year, the amount that exceeds such liability shall be refunded by the Tax Commissioner to*
366 *such individual and interest shall accrue on such refund as provided in subsection B of § 58.1-1833*
until paid by the Tax Commissioner.

§ 58.1-400. Imposition of tax.

A tax at the rate of six percent is hereby annually imposed on the Virginia taxable income for each taxable year of every corporation organized under the laws of the Commonwealth and every foreign corporation having income from Virginia sources *for taxable years beginning prior to January 1, 2003; and a tax at the rate of eight percent is hereby annually imposed on the Virginia taxable income of such corporations for taxable years beginning on or after January 1, 2003.*

§ 58.1-602. Definitions.

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

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

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

"Amusement service" means the provision of amusement, entertainment, or recreation that is consumed for noncommercial purposes. Amusement service includes membership in a private club or organization that provides entertainment, recreational, sports, dining, or social facilities to its members. Amusement service does not include the provision of educational or health services if prescribed by a licensed practitioner of the healing arts for the primary purpose of education or health maintenance or improvement.

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

"Consumed for noncommercial purposes" means any consumption the cost of which would not be permitted as a business deduction or the basis of a business depreciation on the consumer's federal income tax return.

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

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

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

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

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or § 58.1-606 or any tax imposed pursuant to § 58.1-604.4 or § 58.1-604.5.

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

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

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

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

428 subscribers.

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

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

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

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

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

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

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

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

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

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

478 "Personal service" means any service, consumed for noncommercial purposes, when provided
479 through or by: alteration and garment repair; armored car; vehicle repair; battery and tire; investment
480 counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash
481 and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services;
482 dry cleaning; pressing, dyeing, and laundering; electrical and electronic repair and installation; rental
483 of tangible personal property, except mobile homes that are tangible personal property; excavating and
484 grading; farm implement repair of all kinds; flying service; furniture, rug, upholstery repair and
485 cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and
486 building moving; household appliance, television, and radio repair; jewelry and watch repair; limousine
487 service, including driver; machine operator, machine repair of all kinds; motor repair; motorcycle,
488 scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting,
489 papering, and interior decorating; parking facilities, pipe fitting and plumbing; wood preparation;

licensed executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside the state; sewage services for nonresidential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; taxidermy services; telephone answering service; test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons, excluding services provided by certified massage therapists as defined in § 54.1-3000; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables; wrecking service; wrecker and towing; pay television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping, and tree trimming and removal; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening. Personal service does not include the provision of educational or health services if prescribed by a licensed practitioner of the healing arts for the primary purpose of education or health maintenance or improvement.

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

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

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

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

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

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

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

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise,

and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price, or (iii) separately stated local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

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

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

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

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

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

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

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

§ 58.1-603. Imposition of sales tax.

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

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

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

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

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

5. Of the gross sales of any "personal service" or "amusement service" as those terms are defined in § 58.1-602, and of any other services which that are expressly stated as taxable within this chapter.

§ 58.1-609.5. Service exemptions.

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

1. Professional; or insurance; or ~~personal service~~ transactions which that involve sales as inconsequential elements for which no separate charges are made; ~~services rendered by repairmen for which a separate charge is made;~~ and services not involving an exchange of tangible personal property which provide access to or use of the international network of computer systems commonly known as the Internet and any other related electronic communication service.

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

32. Transportation charges separately stated.

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

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

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

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

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

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

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction Program.

A. Subject to the conditions of subsections D and E, the tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1. From January 1, 2000, through March 31, 2001, the tax rate on such food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent shall be used for general fund purposes.

2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall be used for general fund purposes.

3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be used for general fund purposes.

4. On and after April 1, 2003, *through December 31, 2003*, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. ~~The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 and 58.1-606. On and after January 1, 2004, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to food purchased for human consumption.~~

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

D. Notwithstanding the tax rates set forth in subsection A *and except as provided in subsection B*, the rate of tax on sales of food purchased for human consumption for any twelve-month period beginning on or after April 1, 2001, shall not be reduced below the rate then in effect for the

674 Commonwealth's current fiscal year if:

675 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction
676 is contemplated in subsection A do not exceed the official general fund revenue estimates for such
677 preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act,
678 by at least one percent; or

679 2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have
680 occurred during the then current fiscal year.

681 E. *Except as provided in subsection B in regard to the elimination of sales and use taxes on food*
682 *purchased for human consumption*, if the tax rate on food purchased for human consumption remains the
683 same for the period January 1, 2000, through March 31, 2001, and the subsequent twelve-month period
684 beginning on April 1, 2001, or with respect to any consecutive twelve-month periods beginning on and
685 after April 1, 2001, the tax rate on such food shall remain the same unless none of the conditions
686 described in subsection D have occurred, in which event the tax rate on food purchased for human
687 consumption for the immediately following twelve-month period shall be equal to the next lowest tax
688 rate listed in subsection A.

689 F. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food
690 Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction
691 Program as established by this section, and as may be provided for in the general appropriation act. For
692 the purpose of the Comptroller's preliminary and final annual reports required by § 2.2-813, all balances
693 remaining in the Fund on June 30 of each year shall be considered a portion of the fund balance of the
694 general fund of the state treasury.

695 § 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.

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

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

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

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

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

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

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

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

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

719 8. *Provides any personal service or amusement service, as those terms are defined in § 58.1-602, for*
720 *sale in the Commonwealth; or*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. That the Tax Commissioner shall promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for purposes of implementing the provisions of this act.

3. That the provisions of this act amending §§ 58.1-602, 58.1-603, 58.1-609.5, and 58.1-612 shall be effective January 1, 2004.