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HOUSE BILL NO. 859

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 58.1-302, 58.1-320, 58.1-322, 58.1-391, 58.1-392, 58.1-400, 58.1-402, 58.1-415, 58.1-441, 58.1-602, 58.1-603, and 58.1-609.10, as it shall become effective; to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.11, sections numbered 58.1-390.1, 58.1-390.2, and 58.1-393.1, and by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2 and 58.1-395; and to repeal §§ 58.1-339.8, 58.1-390, 58.1-394, and 58.1-611.1 of the Code of Virginia, relating to various changes to the state tax code.

Patron—Watts

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-302, 58.1-320, 58.1-322, 58.1-391, 58.1-392, 58.1-400, 58.1-402, 58.1-415, 58.1-441, 58.1-602, 58.1-603, and 58.1-609.10, as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 9 of Chapter 3 of Title 58.1 a section numbered 58.1-339.11, sections numbered 58.1-390.1, 58.1-390.2, and 58.1-393.1, and by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395 as follows:

§ 58.1-302. Definitions.

For the purpose of this chapter and unless otherwise required by the context:

"Affiliated" means two or more corporations subject to Virginia income taxes whose relationship to each other is such that (i) one corporation owns at least ~~eighty~~80 percent of the voting stock of the other or others or (ii) at least eighty percent of the voting stock of two or more corporations is owned by the same interests.

"Compensation" means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services.

"Corporation" includes associations, joint stock companies and insurance companies.

"Domicile" means the permanent place of residence of a taxpayer and the place to which he intends to return even though he may actually reside elsewhere. In determining domicile, consideration may be given to the applicant's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for federal income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, residence for purposes of voting as proven by registration to vote, if any, and such other factors as may reasonably be deemed necessary to determine the person's domicile.

"Foreign source income" means:

1. Interest, other than interest derived from sources within the United States;
2. Dividends, other than dividends derived from sources within the United States;
3. Rents, royalties, license, and technical fees from property located or services performed without the United States or from any interest in such property, including rents, royalties, or fees for the use of or the privilege of using without the United States any patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties;

4. Gains, profits, or other income from the sale of intangible or real property located without the United States; and

5. The amount of an individual's share of net income attributable to a foreign source qualified business unit of an electing small business corporation (S corporation). For purposes of this subsection, qualified business unit shall be defined by § 989 of the Internal Revenue Code, and the source of such income shall be determined in accordance with §§ 861, 862 and 987 of the Internal Revenue Code.

In determining the source of "foreign source income," the provisions of §§ 861, 862, and 863 of the Internal Revenue Code shall be applied except as specifically provided in subsection 5 above.

"Income and deductions from Virginia sources" includes:

1. Items of income, gain, loss and deduction attributable to:

a. The ownership of any interest in real or tangible personal property in Virginia;

b. A business, trade, profession or occupation carried on in Virginia; or

c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or

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59 paid at a location in Virginia.

60 2. Income from intangible personal property, including annuities, dividends, interest, royalties and
61 gains from the disposition of intangible personal property to the extent that such income is from
62 property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

63 "Individual" means all natural persons whether married or unmarried and fiduciaries acting for
64 natural persons, but not fiduciaries acting for trusts or estates.

65 *"Intangible expenses and costs" means:*

66 1. Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or
67 indirect acquisition, use, maintenance or management, ownership, sale, exchange, lease, transfer, or any
68 other disposition of intangible property to the extent such amounts are allowed as deductions or costs in
69 determining taxable income;

70 2. Losses related to or incurred in connection directly or indirectly with factoring transactions or
71 discounting transactions;

72 3. Royalty, patent, technical and copyright fees;

73 4. Licensing fees; and

74 5. Other similar expenses and costs.

75 *"Intangible property" means patents, patent applications, trade names, trademarks, service marks,
76 copyrights and similar types of intangible assets, as well as money.*

77 *"Interest expenses and costs" means amounts directly or indirectly allowed as deductions under
78 Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal
79 Revenue Code to the extent such expenses and costs are directly or indirectly for, related to, or in
80 connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale,
81 exchange, lease, transfer, or disposition of intangible property.*

82 *"Nonresident estate or trust" means an estate or trust which is not a resident estate or trust.*

83 *"Related entity" means:*

84 1. A stockholder who is an individual, or a member of the stockholder's family enumerated in Section
85 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own,
86 directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of
87 the taxpayer's outstanding stock;

88 2. A stockholder, or a stockholder's partnership, limited liability company, estate, trust or
89 corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates,
90 trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least
91 50 percent of the value of the taxpayer's outstanding stock; or

92 3. A corporation, or a party related to the corporation in a manner that would require an attribution
93 of stock from the corporation to the party or from the party to the corporation under the attribution
94 rules of Section 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially
95 or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution
96 rules of Section 318 of the Internal Revenue Code shall apply for purposes of determining whether the
97 ownership requirements of this subdivision have been met.

98 *"Related member" means a person that, with respect to the taxpayer during all or any portion of the
99 taxable year, is a related entity, a component member as defined in Section 1563(b) of the Internal
100 Revenue Code, or is a person to or from whom there is attribution of stock ownership in accordance
101 with Section 1563(e) of the Internal Revenue Code.*

102 *"Resident" applies only to natural persons and includes, for the purpose of determining liability for
103 the taxes imposed by this chapter upon the income of any taxable year every person domiciled in
104 Virginia at any time during the taxable year and every other person who, for an aggregate of more than
105 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in
106 Virginia or not. The word "resident" shall not include any member of the United States Congress who is
107 domiciled in another state.*

108 *"Resident estate or trust" means:*

109 1. The estate of a decedent who at his death was domiciled in the Commonwealth;

110 2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;

111 3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or

112 4. A trust or estate which is being administered in the Commonwealth.

113 *"Sales" means all gross receipts of the corporation not allocated under § 58.1-407, except the sale or
114 other disposition of intangible property shall include only the net gain realized from the transaction.*

115 *"State" means for purposes of Article 10 of this chapter any state of the United States, the District of
116 Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any
117 foreign country.*

118 *"Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a fiduciary
119 income tax return under the laws of the United States.*

120 *"Virginia fiduciary adjustment" means the net amount of the applicable modifications described in*

§ 58.1-322 (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust) which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment shall not include the modification in subsection D of § 58.1-322, except that the amount of state income taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also include the modification in subsection D of § 58.1-322, regarding the deduction for the purchase of a prepaid tuition contract or contribution to a savings trust account.

§ 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;

Three percent on income in excess of \$3,000, but not in excess of \$5,000 *for taxable years beginning before January 1, 2005;*

Five percent on income equal to or less than \$25,000 for taxable years beginning on and after January 1, 2005;

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, 2004;

Five and three-quarters percent on income in excess of \$25,000 but not in excess of \$60,000 for taxable years beginning on and after January 1, 2005;

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, 2004;

Six and one-half percent on income in excess of \$60,000 but not in excess of \$80,000 for taxable years beginning on and after January 1, 2005;

Seven percent on income in excess of \$80,000 but not in excess of \$100,000 for taxable years beginning on and after January 1, 2005; and

Seven and one-half percent on income in excess of \$100,000 for taxable years beginning on and after January 1, 2005.

§ 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;

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

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

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

5. through 8. [Repealed.]

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

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

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

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

192 3. [Repealed.]

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

195 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
196 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on
197 the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of
198 the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of
199 subsection D of this section may not also claim a subtraction under this subdivision.

200 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as
201 defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a
202 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under
203 this subdivision.

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

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

208 7, 8. [Repealed.]

209 9. [Expired.]

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

212 11. The wages or salaries received by any person for active and inactive service in the National
213 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar
214 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of
215 O3 and below shall be entitled to the deductions specified herein.

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

222 13. [Repealed.]

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

225 15, 16. [Repealed.]

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

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

238 19. For taxable years beginning on and after January 1, 1996, any income received during the taxable
239 year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the
240 Internal Revenue Code, an individual retirement account or annuity established under § 408 of the
241 Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code,
242 or any federal government retirement program, the contributions to which were deductible from the
243 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 30 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 90 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 person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

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

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

29. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a)(2), then the entire gain recognized may be subtracted.

b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a)(3), then 20 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in each of the four succeeding taxable years.

30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1, 2005, the indemnification payments received by contract poultry growers and table egg producers from the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of poultry who contract with poultry growers qualify for this subtraction.

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

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

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. ~~Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987; \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and \$3,000~~ *Three thousand dollars for single individuals for taxable years beginning on and after January 1, 1989, through December 31, 2004; and \$7,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and \$3,500 for single individuals for taxable years beginning on and after January 1, 2005,* provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of ~~\$700 for taxable years beginning January 1, 1987, through December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, through December 31, 2004, and \$2,500 for taxable years beginning on and after January 1, 2005;~~ for each personal exemption allowable to the taxpayer for federal income tax purposes.

For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption.

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

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

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

5. Effective for all taxable years beginning on or after January 1, 1996, *but before January 1, 2005,* a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age 62 through 64.

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 70 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 20 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 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.

§ 58.1-339.11. Sales and use tax paid tax credit.

For taxable years beginning on or after January 1, 2005, any individual whose Virginia taxable income is less than \$50,000 shall be entitled to a credit against the tax levied pursuant to § 58.1-320 of an amount equal to the amount paid by the amount of tax the taxpayer paid under §§ 58.1-603, 58.1-604, 58.1-605, and 58.1-606. The amount of the credit shall not exceed \$120 for the taxpayer, plus an additional \$150 for each dependent claimed on the taxpayer's return.

§ 58.1-390.1. Definitions.

The following words and terms, when used in this article, shall have the following meanings unless the context clearly indicates otherwise:

"Owner" means any individual or entity who is treated as a partner, member, or shareholder of a pass-through entity for federal income tax purposes.

"Pass-through entity" means any entity, including a limited partnership, a limited liability partnership, a general partnership, a limited liability company, a professional limited liability company, a business trust or a Subchapter S Corporation, that is recognized as a separate entity for federal income tax purposes, in which the partners, members or shareholders report their share of the income, gains, losses, deductions and credits from the entity on their federal income tax returns.

§ 58.1-390.2. Taxation of pass-through entities.

Except as provided for in this article, owners of pass-through entities shall be liable for tax under this chapter only in their separate or individual capacities.

§ 58.1-391. Virginia taxable income of owners of a pass-through entity.

428 A. In determining Virginia taxable income of a ~~partner~~ *an owner of a pass-through entity*, any
429 modification described in § 58.1-322 ~~which that~~ relates to an item of ~~partnership~~ *pass-through entity*
430 income, gain, loss or deduction shall be made in accordance with the ~~partner's~~ *owner's* distributive share,
431 for federal income tax purposes, of the item to which the modification relates. Where a ~~partner's~~ *an*
432 *owner's* distributive share of any such item is not included in any category of income, gain, loss or
433 deduction required to be taken into account separately for federal income tax purposes, the
434 ~~partner's~~ *owner's* distributive share of such item shall be determined in accordance with his distributive
435 share, for federal income tax purposes, of ~~partnership~~ *pass-through entity* taxable income or loss.

436 B. Each item of ~~partnership~~ *pass-through entity* income, gain, loss or deduction shall have the same
437 character for a ~~partner~~ *an owner* under this chapter as for federal income tax purposes. Where an item is
438 not characterized for federal income tax purposes, it shall have the same character for a ~~partner~~ *an owner*
439 as if realized directly from the source from which realized by the ~~partnership~~ *pass-through entity* or
440 incurred in the same manner by the ~~partnership~~ *pass-through entity*.

441 C. Where a ~~partner's~~ *an owner's* distributive shares of an item of ~~partnership~~ *pass-through entity*
442 income, gain, loss or deduction is determined for federal income tax purposes by special provision in the
443 ~~partnership~~ *pass-through entity* agreement with respect to such item, and where the principal purpose of
444 such provision is the avoidance or evasion of tax under this chapter, the ~~partner's~~ *owner's* distributive
445 share of such item, and any modification required with respect thereto, shall be determined as if the
446 ~~partnership~~ *pass-through entity* agreement made no special provision with respect to such item.

447 § 58.1-392. Reports by pass-through entities.

448 No report shall be required to be filed with the Department of Taxation by any partnership organized
449 under the laws of the Commonwealth or having income from Virginia sources. However, the Tax
450 Commissioner shall have the authority to promulgate regulations requiring that partnerships furnish
451 copies of federal partnership returns and attached schedules or any other information which he deems
452 necessary. In promulgating such regulations, the Tax Commissioner may prescribe the imposition of a
453 penalty in the amount of \$100 for failure to comply, within a reasonable time, to the request for
454 information as set forth therein.

455 A. Every pass-through entity doing business in Virginia, or having income from Virginia sources,
456 shall make a return to the Department of Taxation on or before the fifteenth day of the fourth month
457 following the close of its taxable year. Such returns shall be made and filed in the manner prescribed by
458 the Department.

459 B. The return of a pass-through entity shall be signed by any one of the owners. An owner's name
460 signed on the return shall be prima facie evidence that such owner is authorized to sign the return on
461 behalf of the pass-through entity.

462 C. The Tax Commissioner may establish an income threshold for the filing of returns by
463 pass-through entities and their owners. Pass-through entities and owners with income below this
464 threshold shall not be required to file a return.

465 D. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees operating the property or
466 business of pass-through entities must make and file returns of income for such pass-through entities. If
467 a receiver has full custody of and control over the business or property of a pass-through entity, he
468 shall be deemed to be operating such business or property, whether he is engaged in carrying on the
469 business for which the pass-through entity was organized or only in marshaling, selling, or disposing of
470 its assets for purposes of liquidation.

471 E. Pass-through entities may be required to file the return using an electronic medium prescribed by
472 the Tax Commissioner. The Tax Commissioner shall establish a minimum number of owners for the
473 electronic filing requirement. Waivers shall be granted only if the Tax Commissioner finds that the
474 requirement creates an unreasonable burden on the pass-through entity. All requests for waivers must be
475 submitted to the Tax Commissioner in writing. Pass-through entities that have fewer than the established
476 minimum number of owners may, at such pass-through entity's option, file such annual return on such
477 prescribed electronic medium in lieu of filing the annual return on paper.

478 § 58.1-393.1. Extension of time for filing return by pass-through entity.

479 A. Whenever any pass-through entity has been allowed or granted an extension of time within which
480 to file any federal report of its income for any taxable year, the due date for the filing of the report or
481 return required by this article shall be extended to the date six months after such due date, or 30 days
482 after the extended date for filing the federal report, whichever is later.

483 B. In addition, the Department may grant an extension or extensions of time not to exceed a
484 maximum of six months beyond the due date required by this article for filing such pass-through entity
485 return.

486 § 58.1-394.1. Failure of pass-through entity to make a return.

487 A. Any pass-through entity that fails to file a return required by this article within the time required
488 shall be liable for a penalty of \$200 if the failure is for not more than one month, with an additional
489 \$200 for each additional month or fraction thereof during which such failure to file continues, not

exceeding six months in the aggregate. In no case, however, shall the penalty be less than \$200.

B. If any pass-through entity's failure to file a return required by this article exceeds six months, the Department shall assess a penalty of six percent of the total amount of Virginia taxable income derived by its owners from the pass-through entity for the taxable year. The Department may determine such penalty from any information in its possession. The penalty assessed pursuant to this subsection shall be reduced by the penalty assessed pursuant to subsection A and any tax paid by the owners on their share of income from the pass-through entity for the taxable year.

C. The penalties set forth in this section shall be assessed and collected by the Department in the manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the instance of the Department. In addition, such pass-through entity shall be compellable by mandamus to file such return.

§ 58.1-394.2. Fraudulent returns, etc., of pass-through entities; penalty.

A. Any officer or owner of any pass-through entity who makes a fraudulent return or statement with the intent of assisting or facilitating the evasion of the payment of the taxes prescribed by this chapter by the pass-through entity or an owner shall be liable for a penalty of not more than \$1,000, to be assessed and collected in the manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the instance of the Department.

B. In addition to other penalties provided by law, any officer or owner of a pass-through entity who makes a fraudulent return or statement with the intent of assisting or facilitating the evasion of the payment of the taxes prescribed by this chapter by the pass-through entity or an owner shall be guilty of a Class 6 felony, or who willfully fails or refuses to make a return required by this chapter at the time or times required by law shall be guilty of a Class 1 misdemeanor. A prosecution under this section shall be commenced within five years next after the commission of the offense.

§ 58.1-395. Nonresident owners.

Pass-through entities may make written application to the Tax Commissioner for permission to file a statement of combined pass-through entity income attributable to nonresident owners and thereby relieve nonresident owners from filing individual nonresident returns. The application must state the reasons for seeking such permission. The Tax Commissioner, in his sole discretion, may, for good cause, grant permission to file a combined nonresident return upon such terms as he may determine.

§ 58.1-400. Imposition of tax.

A tax at the rate of ~~six~~ seven and one-half 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.

§ 58.1-402. Virginia taxable income.

A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable income and any other income taxable to the corporation under federal law for such year of a corporation adjusted as provided in subsections B, C and D.

For a regulated investment company and a real estate investment trust, such term means the "investment company taxable income" and "real estate investment trust taxable income," respectively, to which shall be added in each case any amount of capital gains and any other income taxable to the corporation under federal law which shall be further adjusted as provided in subsections B, C and D.

B. There shall be added to the extent excluded from federal taxable income:

1. Interest, less related expenses to the extent not deducted in determining federal taxable 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 the Commonwealth is a party;

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

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

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

6. The amount of employee stock ownership credit carry-over deducted by the corporation in computing federal taxable income under § 404 (i) of the Internal Revenue Code;

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

8. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more

551 *related members to the extent such expenses and costs were deductible or deducted in computing federal*
552 *taxable income for Virginia purposes. This addition shall not be required for any portion of the interest*
553 *expenses and costs and intangible expenses and costs if one of the following applies:*

554 1. *The corresponding item of income received by the related member is subject to a tax based on or*
555 *measured by net income imposed by Virginia, another state, or a foreign government that has entered*
556 *into a comprehensive tax treaty with the United States government; or*

557 2. *The corporation can establish to the satisfaction of the Tax Commissioner that the interest*
558 *expenses and costs and intangible expenses and costs meet both of the following: (i) the related member*
559 *during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person*
560 *who is not a related member, and (ii) the transaction giving rise to the interest expenses and costs or*
561 *the intangible expenses and costs between the corporation and the related member did not have as a*
562 *principal purpose the avoidance of any portion of the tax due under this chapter.*

563 *b. Nothing in this subdivision shall be construed to limit or negate the Department's authority under*
564 *§ 58.1-446.*

565 C. *There shall be subtracted to the extent included in and not otherwise subtracted from federal*
566 *taxable income:*

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

572 2. *Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth*
573 *or of any political subdivision or instrumentality of this Commonwealth.*

574 3. *Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the*
575 *Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding*
576 *year, or the last year in which such corporation has income, under the provisions of the income tax laws*
577 *of the Commonwealth.*

578 4. *The amount of any refund or credit for overpayment of income taxes imposed by this*
579 *Commonwealth or any other taxing jurisdiction.*

580 5. *Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue*
581 *Code (foreign dividend gross-up).*

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

584 7. *Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F*
585 *income).*

586 8. *Any amount included therein which is foreign source income as defined in § 58.1-302.*

587 9. *[Repealed.]*

588 10. *The amount of any dividends received from corporations in which the taxpaying corporation*
589 *owns 50 percent or more of the voting stock.*

590 11. *[Repealed.]*

591 12. *[Expired.]*

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

594 14. *For taxable years beginning on or after January 1, 1995, the amount for "qualified research*
595 *expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not*
596 *deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code.*

597 15. *For taxable years beginning on or after January 1, 2000, the total amount actually contributed in*
598 *funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1*
599 *(§ 22.1-175.1 et seq.) of Title 22.1.*

600 16. *For taxable years beginning on or after January 1, 2000, the gain derived from the sale or*
601 *exchange of real property or the sale or exchange of an easement to real property which results in the*
602 *real property or the easement thereto being devoted to open-space use, as that term is defined in*
603 *§ 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in*
604 *accordance with this subdivision, no tax credit under this chapter for donating land for its preservation*
605 *shall be allowed for three years following the year in which the subtraction is taken.*

606 17. *For taxable years beginning on and after January 1, 2001, any amount included therein with*
607 *respect to § 58.1-440.1.*

608 18. *For taxable years beginning on and after January 1, 1999, income received as a result of (i) the*
609 *"Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement*
610 *Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part*
611 *1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b) any business*
612 *holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural*

Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

19. Effective for all taxable years beginning on and after January 1, 2002, but before January 1, 2005, the indemnification payments received by contract poultry growers and table egg producers from the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of poultry who contract with poultry growers qualify for this subtraction.

20. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a)(2), then the entire gain recognized may be subtracted.

b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a)(3), then 20 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in each of the four succeeding taxable years.

D. Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58.1-315.

§ 58.1-415. When sales of tangible personal property deemed in the Commonwealth.

Sales of tangible personal property are in the Commonwealth if (i) such property is received in the Commonwealth by the purchaser, or (ii) *the property is shipped from an office, store, warehouse, factory, or place of storage in the Commonwealth; and the taxpayer is not taxable in the state of the purchaser.* In the case of delivery by common carrier or other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in the Commonwealth, other than for purposes of transportation, to a person or firm designated by a purchaser, constitutes delivery to the purchaser in the Commonwealth, and direct delivery outside the Commonwealth to a person or firm designated by the purchaser does not constitute delivery to the purchaser in the Commonwealth, regardless of where title passes, or other conditions of sale.

§ 58.1-441. Reports by corporations.

A. Every corporation organized under the laws of the Commonwealth, or having income from Virginia sources, *other than a Subchapter S corporation subject to the return filing requirements of § 58.1-392*, shall make a report to the Department on or before the fifteenth day of the fourth month following the close of its taxable year. Such reports shall be made on forms prescribed by the Department and shall contain such information, including the gross receipts from any business carried on in the Commonwealth and a depreciation schedule of property used in such trade or business, as may be necessary for the proper enforcement of this chapter and be accompanied by a copy of any federal tax return or report filed for such taxable year. The Department shall not require any nonprofit organization created exclusively to assist a law-enforcement official or agency in apprehending and convicting perpetrators of crimes, to report on such returns, or otherwise, the names of individuals or amounts paid to such individuals by the organization for providing information about certain crimes.

Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business of corporations must make returns of income for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property, whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, or disposing of its assets for purposes of liquidation.

B. Notwithstanding the provisions of subsection A, every organization to whom subdivision 5 of § 58.1-401 applies, and having unrelated business taxable income or other taxable income, shall make a report to the Department on or before the fifteenth day of the sixth month following the close of the organization's taxable year.

§ 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

734 "Modular building manufacturer" means a person or corporation who owns or operates a
735 manufacturing facility and is engaged in the fabrication, construction and assembling of building

supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

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

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

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

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

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

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

"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~~ 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; 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.

"Service" means all activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include: (i) any service when it is provided to a business entity for a legitimate business purpose; and (ii) any health-care related services.

"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 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 services which are expressly stated as taxable within this chapter as

defined in § 58.1-602.

§ 58.1-609.10. (Effective July 1, 2004) Miscellaneous exemptions.

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

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

2. An occasional sale, as defined in § 58.1-602.

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

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

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

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

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

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

9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his professional practice, regardless of whether such practice is organized as a sole proprietorship, partnership, or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician assistants engaged in the practice of medicine, optometry, or nursing, but excluding nursing homes, clinics, and similar corporations not otherwise exempt under this section; medicines and drugs purchased for use or consumption by a licensed hospital; and samples of prescription drugs and medicines and their packaging distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). Any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed to be the user or consumer of all such medicines and drugs.

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

- 920 11. Drugs and supplies used in hemodialysis and peritoneal dialysis.
921 12. Special equipment installed on a motor vehicle when purchased by a handicapped person to
922 enable such person to operate the motor vehicle.
923 13. Special typewriters and computers and related parts and supplies specifically designed for those
924 products used by handicapped persons to communicate when such equipment is prescribed by a licensed
925 physician.
926 14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation,
927 treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and
928 proprietary medicines distributed free of charge by the manufacturer, including packaging materials and
929 constituent elements and ingredients.
930 b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to
931 regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision
932 shall not apply to cosmetics.
933 15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt
934 from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political
935 subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.
936 16. *Food purchased for human consumption. As used in this subsection, "food purchased for human*
937 *consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012,*
938 *as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and*
939 *plants that produce food for human consumption. For the purpose of this section, "food purchased for*
940 *human consumption" shall not include food sold by any retail establishment where the gross receipts*
941 *derived from the sale of food prepared by such retail establishment for immediate consumption on or off*
942 *the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of*
943 *that retail establishment, including but not limited to motor fuel purchases, regardless of whether such*
944 *prepared food is consumed on the premises of that retail establishment. For purposes of this section,*
945 *"retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is*
946 *required to apply for and receive a certificate of registration pursuant to § 58.1-613.*
947 **2. That § 58.1-339.8, 58.1-390, 58.1-394, and 58.1-611.1 of the Code of Virginia are repealed.**