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SENATE BILL NO. 635

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 17, 2004)

(Patron Prior to Substitute—Senator Chichester)

A BILL to amend and reenact §§ 10.1-1020, 10.1-2128, 10.1-2133, 33.1-12, 33.1-23.03:1, 33.1-23.03:8, 33.1-418, 33.1-439, 46.2-694, 46.2-697, 46.2-698, 46.2-700, 58.1-302, 58.1-320, 58.1-321, 58.1-322, 58.1-324, 58.1-339.8, 58.1-341, 58.1-391, 58.1-392, 58.1-402, 58.1-415, 58.1-441, 58.1-520, 58.1-603, 58.1-604, 58.1-604.1, 58.1-608.3, 58.1-609.3, 58.1-611.1, 58.1-614, 58.1-615, 58.1-627, 58.1-628, 58.1-638, 58.1-639, 58.1-801, 58.1-803, 58.1-807, 58.1-808, 58.1-815, 58.1-816, 58.1-901, 58.1-902, 58.1-2217, 58.1-2249, 58.1-2289, 58.1-2402, 58.1-2425, 58.1-2701, 58.1-2706, and 58.1-3833 of the Code of Virginia; to amend the Code of Virginia by adding in Title 10.1 a chapter numbered 21.2 consisting of a section numbered 10.1-2135, by adding sections numbered 46.2-702.1, 58.1-390.1, 58.1-390.2, and 58.1-393.1, 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, by adding in Chapter 22 of Title 58.1 an article number 8.1, consisting of a section numbered 58.1-2288.1; and to repeal the tenth enactment of Chapters 1019 and 1044 of the Acts of Assembly of 2000, relating to the revenues of the Commonwealth.

Whereas, the General Assembly has made funding commitments it cannot keep; and

Whereas, transportation revenues are increasingly being devoted to road maintenance rather than road construction and soon revenue will be insufficient to draw down all available federal taxes paid by Virginians; and

Whereas, Virginia has been put on "credit watch" by a respected bond rating agency because tax relief promised and growth in certain core functions are not backed by sustainable revenues, resulting in repeated one-time fixes to balance each biennial budget; and

Whereas, the fairness of the tax code has been diminished over time from actions that provide preferential tax treatment; and

Whereas, local government real estate taxes are increased when the Commonwealth fails to pay its fair share of public education Standards of Quality costs; and

Whereas, strategic investments in public education, higher education, public safety, natural resources and transportation are needed to keep Virginia's economy growing; and

Whereas, Virginia's major tax rates have been essentially the same for almost 40 years; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1020, 10.1-2128, 10.1-2133, 33.1-12, 33.1-23.03:1, 33.1-23.03:8, 33.1-418, 33.1-439, 46.2-694, 46.2-697, 46.2-698, 46.2-700, 58.1-302, 58.1-320, 58.1-321, 58.1-322, 58.1-324, 58.1-339.8, 58.1-341, 58.1-391, 58.1-392, 58.1-402, 58.1-415, 58.1-441, 58.1-520, 58.1-603, 58.1-604, 58.1-604.1, 58.1-608.3, 58.1-609.3, 58.1-611.1, 58.1-614, 58.1-615, 58.1-627, 58.1-628, 58.1-638, 58.1-639, 58.1-801, 58.1-803, 58.1-807, 58.1-808, 58.1-815, 58.1-816, 58.1-901, 58.1-902, 58.1-2217, 58.1-2249, 58.1-2289, 58.1-2402, 58.1-2425, 58.1-2701, 58.1-2706, and 58.1-3833 of the Code of Virginia are amended and reenacted, that the Code of Virginia is amended by adding in Title 10.1 a chapter numbered 21.2 consisting of a section numbered 10.1-2135, by adding sections numbered 46.2-702.1, 58.1-390.1, 58.1-390.2 and 58.1-393.1, 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 by adding in Chapter 22 of Title 58.1 an article number 8.1, consisting of a section numbered 58.1-2288.1, as follows:

§ 10.1-1020. Virginia Land Conservation Fund; purposes of Foundation.

A. The Foundation shall establish, administer, manage, including the creation of reserves, and make expenditures and allocations from a special, nonreverting fund in the state treasury to be known as the Virginia Land Conservation Fund, hereinafter referred to as the Fund. The Foundation shall establish and administer the Fund solely for the purposes of:

1. Acquiring fee simple title to or other rights, interests or privileges in property for the protection or preservation of ecological, cultural or historical resources, lands for recreational purposes, state forest lands, and lands for threatened or endangered species, fish and wildlife habitat, natural areas, agricultural and forestal lands and open space; and

2. Providing grants to state agencies, including the Virginia Outdoors Foundation, and matching grants to other public bodies and holders for acquiring fee simple title to or other rights, interests or privileges in real property for the protection or preservation of ecological, cultural or historical resources, lands for recreational purposes, and lands for threatened or endangered species, fish and wildlife habitat, natural areas, agricultural and forestal lands and open space. The Board shall establish

criteria for making grants from the Fund, including procedures for determining the amount of each grant and the required match. The criteria shall include provisions for grants to localities for purchase of development rights programs.

Interests in land acquired as provided in subdivision 1 of this subsection may be held by the Foundation or transferred to state agencies or other appropriate holders. Whenever a holder acquires any interest in land other than a fee simple interest as a result of a grant or transfer from the Foundation, such interest shall be held jointly by the holder and a public body. Whenever a holder acquires a fee simple interest in land as a result of a grant or transfer from the Foundation, a public body shall hold an open space easement in such land.

B. The Fund shall consist of ~~general fund moneys~~ *the transfers in each fiscal year pursuant to § 10.1-2135* and gifts, endowments or grants from the United States government, its agencies and instrumentalities, and funds from any other available sources, public or private. Such moneys, gifts, endowments, grants or funds from other sources may be either restricted or unrestricted. For the purposes of this chapter, "restricted funds" shall mean those funds received by the Board to which specific conditions apply; "restricted funds" shall include, but not be limited to, general obligation bond moneys and conditional gifts. "Unrestricted funds" shall mean those received by the Foundation to which no specific conditions apply; "unrestricted funds" shall include, but not be limited to, moneys appropriated to the Fund by the General Assembly to which no specific conditions are attached and unconditional gifts.

C. After an allocation for administrative expenses has been made as provided in subsection F, the remaining unrestricted funds in the Fund shall be allocated as follows:

1. Twenty-five percent shall be transferred to the Open-Space Lands Preservation Trust Fund to be used as provided in § 10.1-1801.1; and

2. Seventy-five percent shall be divided equally among the following four uses: (i) natural area protection; (ii) open spaces and parks; (iii) farmlands and forest preservation; and (iv) historic area preservation. Of the amount allocated as provided in this subdivision, at least one third shall be used to secure easements to be held or co-held by a public body.

D. Any moneys remaining in the Fund at the end of a biennium shall remain in the Fund, and shall not revert to the general fund. Interest earned on moneys received by the Fund other than bond proceeds shall remain in the Fund and be credited to it.

E. A portion of the Fund, not to exceed ~~twenty~~*20* percent of the annual balance of unrestricted funds, may be used to develop properties purchased in fee simple with the assets of the Fund for public use including, but not limited to, development of trails, parking areas, infrastructure, and interpretive projects or to conduct environmental assessments or other preliminary evaluations of properties prior to the acquisition of any property interest.

F. Up to $250,000 per year of the interest generated by the Fund may be used for the Foundation's administrative expenses, including, but not limited to, the expenses of the Board and its members, development of the Foundation's strategic plan, development and maintenance of an inventory of properties as provided in subdivision 1 b of § 10.1-1021, development of a needs assessment for future expenditures as provided in subdivision 1 c of § 10.1-1021, and fulfillment of reporting requirements. All such expenditures shall be subject to approval by the Board of Trustees.

G. The Comptroller shall maintain the restricted funds and the unrestricted funds in separate accounts.

H. For the purposes of this section, "public body" shall have the meaning ascribed to it in § 10.1-1700, and "holder" shall have the meaning ascribed to it in § 10.1-1009.

§ 10.1-2128. Virginia Water Quality Improvement Fund established; purposes.

A. There is hereby established in the state treasury a special permanent, nonreverting fund, to be known as the "Virginia Water Quality Improvement Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly which shall include, unless otherwise provided in the general appropriation act, ~~ten~~ *10* percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act ~~and ten percent of any unreserved general fund balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act~~ *for the relevant fiscal year up to a total of $20 million in any fiscal year. Pursuant to § 2.2-1514, at the end of each fiscal year the Comptroller shall set aside such amount for deposit into the Fund from such excess general fund revenue collections.* The Fund shall also consist of *the transfers in each fiscal year pursuant to § 10.1-2135 and* such other sums as may be made available to it from any other source, public or private, and shall include any penalties or damages collected under this article, federal grants solicited and received for the specific purposes of the Fund, and all interest and income from investment of the Fund. Any sums remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All moneys designated for the Fund shall be paid into the state treasury and credited to the Fund. Moneys in the Fund shall be used solely for Water Quality Improvement

Grants. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon the written request of the Director of the Department of Environmental Quality or the Director of the Department of Conservation and Recreation as provided in this chapter.

B. The purpose of the Fund is to provide Water Quality Improvement Grants to local governments, soil and water conservation districts, institutions of higher education and individuals for point and nonpoint source pollution prevention, reduction and control programs and efforts undertaken in accordance with the provisions of this chapter. The Fund shall not be used for agency operating expenses or for purposes of replacing or otherwise reducing any general, nongeneral, or special funds allocated or appropriated to any state agency; however, nothing in this section shall be construed to prevent the award of a Water Quality Improvement Grant to a local government in connection with point or nonpoint pollution prevention, reduction and control programs or efforts undertaken on land owned by the Commonwealth and leased to the local government.

§ 10.1-2133. Annual report by State Comptroller.

The State Comptroller shall, by January 1 of each year, certify to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance, the total amount of annual general fund revenue collections in excess of the official estimate in the general appropriation act~~, the total amount of the unreserved general fund balance whose reappropriation is not required in the general appropriation act~~ at the close of the previous fiscal year and the total amount of funds that are to be directed to the credit of the Virginia Water Quality Improvement Fund under this article *and pursuant to § 10.1-2135* unless otherwise provided in the general appropriation act.

CHAPTER 21.2.

VIRGINIA NATURAL AND HISTORIC RESOURCES FUND.

§ 10.1-2135. Virginia Natural and Historic Resources Fund; established.

A. There is hereby created in the state treasury a special permanent, nonreverting, interest-bearing fund to be known as the Virginia Natural and Historic Resources Fund, hereinafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of (i) any sales and use tax revenues transferred pursuant to subsection F of § 58.1-638; (ii) any other moneys appropriated to it by the General Assembly; and (iii) such other sums as may be made available to it from any other source, public or private, all of which shall be credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall remain in the Fund and shall not revert to the general fund.

B. On a quarterly basis, all moneys deposited in the Fund including interest, with the exception of any sales and use tax revenues transferred pursuant to subsection F of § 58.1-638, shall be allocated by the Secretary of Natural Resources in the following manner:

1. No less than 40 percent and no more than 60 percent of the moneys in the Fund shall be deposited into the Virginia Land Conservation Fund to be expended as provided in Chapter 10.2 (§ 10.1-1017 et seq.) of this title; and

2. The remainder of the moneys in the Fund shall be deposited into the Virginia Water Quality Improvement Fund to be expended as provided in Chapter 21.1 (§ 10.1-2117 et seq.) of this title.

C. The $30 million of sales and use tax revenues transferred in each fiscal year to the Fund pursuant to subsection F of § 58.1-638 shall be transferred out of the Fund in each fiscal year by the Comptroller as follows:

1. $14,812,500 shall be transferred to the Virginia Land Conservation Fund to be expended as provided in Chapter 10.2 (§ 10.1-1017 et seq.) of this title;

2. $14,812,500 shall be transferred to the Virginia Water Quality Improvement Fund to be expended as provided in Chapter 21.1 (§ 10.1-2117 et seq.) of this title; and

3. A total of $375,000 shall be transferred among the Department of Environmental Quality and the Department of Conservation and Recreation for operations as provided in the general appropriation act.

The Comptroller shall make the transfers required by this subsection as soon as practicable. The Comptroller shall make such transfers to the Virginia Land Conservation Fund and to the Virginia Water Quality Improvement Fund on the same calendar day or days and in the same amount to each Fund.

§ 33.1-12. General powers and duties of Board, etc.; definitions.

The Commonwealth Transportation Board shall be vested with the following powers and shall have the following duties:

(1) Location of routes. - To locate and establish the routes to be followed by the roads comprising systems of state highways between the points designated in the establishment of such systems.

(2) Construction and maintenance contracts and activities related to passenger and freight rail and public transportation.

(a) To let all contracts for the construction, maintenance, and improvement of the roads comprising systems of state highways and for all activities related to passenger and freight rail and public

transportation in excess of $2 million. The Commonwealth Transportation Commissioner shall have authority to let all contracts for highway construction, maintenance, and improvements up to $2 million in value. The Director of the Department of Rail and Public Transportation shall have the authority to let contracts for passenger and freight rail and public transportation improvements up to $2 million in value. The Commonwealth Transportation Commissioner is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts up to $2 million in value for highway construction, maintenance, and improvements within their jurisdictions. The Director of the Department of Rail and Public Transportation is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts up to $2 million in value for passenger and freight rail and public transportation activities within their jurisdictions. The Commonwealth Transportation Commissioner and the Director of the Department of Rail and Public Transportation shall report on their respective transportation contracting activities at least quarterly to the Board.

(b) The Commonwealth Transportation Board may award contracts for the construction of transportation projects on a design-build basis. The Board may annually award five design-build contracts valued no more than $20 million. The Board may also award design-build contracts valued more than $20 million, provided that no more than five of these latter contracts are in force at the same time. These contracts may be awarded after a written determination is made by the Commonwealth Transportation Commissioner, pursuant to objective criteria previously adopted by the Board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. Such objective criteria will include requirements for prequalification of contractors and competitive bidding processes. These contracts shall be of such size and scope to encourage maximum competition and participation by agency prequalified and otherwise qualified contractors. Such determination shall be retained for public inspection in the official records of the Department of Transportation and shall include a description of the nature and scope of the project and the reasons for the Commissioner's determination that awarding a design-build contract will best serve the public interest. The provisions of this section shall supersede contrary provisions of subdivision 2 of subsection C of § 11-41 and § 11-41.2.

(c) For transportation construction projects valued in excess of $100 million, the Commonwealth Transportation Board shall require that a financial plan be prepared. This plan shall include, but not be limited to, the following: (i) a complete cost estimate for all major project elements; (ii) an implementation plan with the project schedule and cost-to-complete information presented for each year; (iii) identified revenues by funding source available each year to meet project costs; and (iv) a detailed cash-flow analysis for each year of the proposed project.

(3) Traffic regulations. - To make rules and regulations, from time to time, not in conflict with the laws of this Commonwealth, for the protection of and covering traffic on and the use of systems of state highways and to add to, amend or repeal the same.

(4) Naming highways. - To give suitable names to state highways and change the names of any highways forming a part of the systems of state highways, except such roads as have been or may hereafter be named by the General Assembly.

(5) Compliance with federal acts. - To comply fully with the provisions of the present or future federal aid acts. The Board may enter into all contracts or agreements with the United States government and may do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress in the area of transportation.

(6) Information and statistics. - To gather and tabulate information and statistics relating to transportation and disseminate the same throughout the Commonwealth. In addition, the Commissioner shall provide a report to the Governor, the General Assembly, the Commonwealth Transportation Board, and the public concerning the current status of all highway construction projects in the Commonwealth. This report shall be posted at least four times each fiscal year, but may be updated more often as circumstances allow. The report shall contain, at a minimum, the following information for every project in the Six-Year Improvement Program: (i) project description; (ii) total cost estimate; (iii) funds expended to date; (iv) project timeline and completion date; (v) statement of whether project is ahead of, on, or behind schedule; and (vi) the name of the prime contractor. Use of one or more Internet websites may be used to satisfy this requirement. Project specific information posted on the Internet shall be updated daily as information is available.

(7) Policies and operation of Departments. - To review and approve policies and transportation objectives of the Department of Transportation and the Department of Rail and Public Transportation, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report thereon to the Commonwealth Transportation Commissioner and the Director of the Department of Rail and Public Transportation, respectively.

(8) Cooperation with other agencies and local governments. - (a) To cooperate with the federal government, the American Association of State Highway and Transportation Officials and any other organization in the numbering, signing and marking of highways, in the taking of measures for the promotion of highway safety, in research activities, in the preparation of standard specifications, in the testing of highway materials and otherwise with respect to transportation projects.

(b) To offer technical assistance and coordinate state resources to work with local governments, upon their request, in developing sound transportation components for their local comprehensive plans.

(9) Transportation. - (a) To monitor and, where necessary, approve actions taken by the Department of Rail and Public Transportation pursuant to Chapter 10.1 (§ 33.1-391.1 et seq.) of this title in order to ensure the efficient and economical development of public transportation, the enhancement of rail transportation, and the coordination of such rail and public transportation plans with highway programs.

(b) To coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and to set aside funds as provided in § 33.1-23.03:1. To allocate funds for these needs pursuant to §§ 33.1-23.1 ~~and~~ , *46.2-702.1, and* 58.1-638*, subsection F of § 58.1-2289, and subsection B of § 58.1-2425,* the Board shall adopt a Six-Year Improvement Program of anticipated projects and programs by July 1 of each year. This program shall be based on the most recent official Transportation Trust Fund revenue forecast and shall be consistent with a debt management policy adopted by the Board in consultation with the Debt Capacity Advisory Committee and the Department of the Treasury.

(c) To recommend to the General Assembly for their consideration at the next session of the General Assembly, objective criteria to be used by the Board in selecting those transportation projects to be advanced from the feasibility to the construction stage. If such criteria are enacted into law, such objectives shall apply to the interstate, primary, and urban systems of highways.

(d) To enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes.

(10) Contracts with other states. - To enter into all contracts with other states necessary for the proper coordination of the location, construction, maintenance, improvement and operation of transportation systems, including the systems of state highways with the highways of such other states and, where necessary, to seek the approval of such contracts by the Congress of the United States.

(11) Use of funds. - To administer, distribute, and allocate funds in the Transportation Trust Fund as provided by law.

(12) Financial and investment advisors. - With the advice of the Secretary of Finance and the State Treasurer, to engage a financial advisor and investment advisor who may be anyone within or without the government of the Commonwealth, to assist in planning and making decisions concerning the investment of funds and the use of bonds for transportation purposes. The work of these advisors shall be coordinated with the Secretary of Finance and the State Treasurer.

(13) The powers of the Virginia Aviation Board set out in Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 and the Virginia Port Authority set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 are in no way diminished by the provisions of this title.

(14) To enter into payment agreements with the Treasury Board related to payments on bonds issued by the Commonwealth Transportation Board.

(15) Outdoor theaters. - By regulation:

(a) To prevent the erection of moving picture screens of outdoor theaters in such a manner as to be ordinarily visible from any highway;

(b) To require that a sufficient space is left between any highway and the entrance to any outdoor theater to prevent congestion on the highway; and

(c) To require that outdoor theater entrances and exits are adequately lighted and marked.

Throughout this title the term "systems of state highways" shall have the meaning ascribed thereto by § 1-13.40.

The term "public transportation" or "mass transit" as used in this title means passenger transportation by rubber-tired, rail, or other surface conveyance which provides shared ride services open to the general public on a regular and continuing basis. The term does not include school buses; charter or sight-seeing service; vehicular ferry service which serves as a link in the highway network; or human service agency or other client-restricted transportation.

§ 33.1-23.03:1. Transportation Trust Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Transportation Trust Fund, consisting of:

1. Funds remaining for highway construction purposes, among the several highway systems pursuant to § 33.1-23.1.

2. [Repealed.]

3. The additional revenues generated by enactments of Chapters 11, 12 and 15 of the Acts of

Assembly, 1986 Special Session, *and designated for this fund; and the additional revenues described in § 46.2-702.1, subsection F of § 58.1-2289, and clause (iv) of subsection A of § 58.1-2425 generated by enactments of the 2004 Session of the General Assembly,* and designated for this fund.

4. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title which are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to § 33.1-253 (Chesapeake Bay Bridge and Tunnel District) and § 33.1-320 (Richmond Metropolitan Authority) or if the appointed governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Transportation Trust Fund to the extent required by law or the Board.

5. Tolls and other revenues derived from the Richmond-Petersburg Turnpike, provided that such funds shall be held in a separate subaccount of the Transportation Trust Fund and allocated as set forth in Chapter 574 of the Acts of Assembly of 1983 until expiration of that Act.

6. Such other funds as may be appropriated by the General Assembly from time to time, and designated for this fund.

7. All interest, dividends and appreciation which may accrue to the Transportation Trust Fund and the Highway Maintenance and Construction Fund, except that interest on funds becoming part of the Transportation Trust Fund under subdivision 1 and the Highway Maintenance and Construction Fund shall not become part of the Transportation Trust Fund until July 1, 1988.

8. All amounts required by contract to be paid over to the Transportation Trust Fund.

§ 33.1-23.03:8. Priority Transportation Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Priority Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. All funds as may be designated in the appropriation act for deposit to the Fund shall be paid into the state treasury and credited to the Fund. Such funds shall include:

1. A portion of the moneys actually collected, including penalty and interest, attributable to any increase in revenues from the taxes imposed under Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1, with such increase being calculated as the difference between such tax revenues collected in the manner prescribed under Chapter 22 less such tax revenues that would have been collected using the prescribed manner in effect before the effective date of Chapter 22. The portion to be deposited to the Fund shall be the moneys actually collected from such increase in revenues, *net of the additional revenues described in subsection F of § 58.1-2289 designated for deposit into the Transportation Trust Fund established under § 33.1-23.03:1* and allocated for highway and mass transit improvement projects as set forth in § 33.1-23.03:2, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section. There shall also be deposited into the Fund all additional federal revenues attributable to Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1; and

2. Beginning with the fiscal year ending June 30, 2000, and for fiscal years thereafter, all revenues that exceed the official forecast, pursuant to § 2.2-1503, for (i) the Highway Maintenance and Operating Fund and (ii) the allocation to highway and mass transit improvement projects as set forth in § 33.1-23.03:2, but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section; and

3. Any other such funds as may be transferred, allocated, or appropriated.

The Fund shall be considered a part of the Transportation Trust Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes enumerated in subsection B of this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller.

B. The Commonwealth Transportation Board shall use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. The Board may use the Fund either (i) by expending amounts therein on such projects directly, (ii) by payment to any authority, locality, commission or other entity for the purpose of paying the costs thereof, or (iii) by using such amounts to support, secure, or leverage financing for such projects. No expenditures from or other use of amounts in the Fund shall be considered in allocating highway maintenance and construction funds under § 33.1-23.1 or apportioning Transportation Trust Fund funds under § 58.1-638, but shall be in addition thereto. The Board shall use the Fund to facilitate the financing of priority transportation projects as designated by the General Assembly; provided, however, that, at the discretion of the Commonwealth Transportation Board, funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

§ 33.1-418. Allocation of funds to districts.

The local governing body of any locality in which a district has been created pursuant to this chapter may advance funds or provide matching funds from money not otherwise specifically allocated or obligated. Such funds may be received or generated from whatever source, including, without limitation, general revenues, special fees and assessments, state allocations, and contributions from private sources to a local district to assist the local district to undertake the transportation improvements for which it was created. To assist the district with an approved transportation improvement, the Commonwealth Transportation Board may allocate to a district created pursuant to this chapter only funds allocated, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, ~~and~~ *§ 46.2-702.1,* subsection A of § 58.1-638*, subsection F of § 58.1-2289, and subsection B of § 58.1-2425,* to the construction districts and localities in which such transportation district is located.

§ 33.1-439. Allocation of funds to districts.

The governing body of any county or town council of any participating town in which a district has been created pursuant to this chapter may advance funds or provide matching funds from money not otherwise specifically allocated or obligated. Such funds may be received or generated from whatever source, including, without limitation, general revenues, special fees and assessments, state allocations, and contributions from private sources to a local district to assist the local district to undertake the transportation improvements for which it was created. To assist the district with an approved transportation improvement, the Commonwealth Transportation Board may allocate to a district created pursuant to this chapter only funds allocated, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, ~~and~~ *§ 46.2-702.1,* subsection A of § 58.1-638, *subsection F of § 58.1-2289, and subsection B of § 58.1-2425,* to the construction districts and localities in which such transportation district is located.

§ 46.2-694. Fees for vehicles designed and used for transportation of passengers; weights used for computing fees; burden of proof.

A. The annual registration fees for motor vehicles, trailers, and semitrailers designed and used for the transportation of passengers on the highways in the Commonwealth are:

1. ~~Twenty-three~~ *Thirty-three* dollars for each private passenger car or motor home if the passenger car or motor home weighs 4,000 pounds or less, provided that it is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire, or is not operated under a lease without a chauffeur.

2. ~~Twenty-eight~~ *Thirty-eight* dollars for each passenger car or motor home which weighs more than 4,000 pounds, provided that it is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire, or is not operated under a lease without a chauffeur.

3. Thirty cents per 100 pounds or major fraction thereof for a private motor vehicle other than a motorcycle with a normal seating capacity of more than ~~ten~~ *10* adults including the driver if the private motor vehicle is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire or is not operated under a lease without a chauffeur. In no case shall the fee be less than ~~twenty-three dollars~~*$33* if the vehicle weighs 4,000 pounds or less or ~~twenty-eight dollars~~ *$38* if the vehicle weighs more than 4,000 pounds.

4. Thirty cents per 100 pounds or major fraction thereof for a school bus. In no case shall the fee be less than ~~twenty-three dollars~~ *$33* if the vehicle weighs 4,000 pounds or less or ~~twenty-eight~~ *$38* dollars if the vehicle weighs more than 4,000 pounds.

5. ~~Twenty-three~~ *Thirty-three* dollars for each trailer or semitrailer designed for use as living quarters for human beings.

6. ~~Thirteen~~ *Twenty-three* dollars plus ~~thirty~~ *30* cents per 100 pounds or major fraction thereof for each motor vehicle, trailer, or semitrailer used as a common carrier of passengers, operating either intrastate or interstate. Interstate common carriers of interstate passengers may elect to be licensed and pay the fees prescribed in subdivision 7 of this subsection on submission to the Commissioner of a declaration of operations and equipment as he may prescribe. An additional ~~five dollars~~*$5* shall be charged if the motor vehicle weighs more than 4,000 pounds.

7. ~~Thirteen~~ *Twenty-three* dollars plus ~~seventy~~ *70* cents per 100 pounds or major fraction thereof for each motor vehicle, trailer, or semitrailer used as a common carrier of interstate passengers if election is made to be licensed under this subsection. An additional ~~five dollars~~*$5* shall be charged if the motor vehicle weighs more than 4,000 pounds. In lieu of the foregoing fee of ~~seventy~~ *70* cents per 100 pounds, a motor carrier of passengers, operating two or more vehicles both within and outside the Commonwealth and registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, may apply to the Commissioner for prorated registration. Upon the filing of such application, in such form as the Commissioner may prescribe, the Commissioner shall apportion the registration fees provided in this subsection so that the total registration fees to be paid for such vehicles of such carrier shall be that proportion of the total fees, if there were no apportionment, that the total number of miles traveled by

such vehicles of such carrier within the Commonwealth bears to the total number of miles traveled by such vehicles within and outside the Commonwealth. Such total mileage in each instance is the estimated total mileage to be traveled by such vehicles during the license year for which such fees are paid, subject to the adjustment in accordance with an audit to be made by representatives of the Commissioner at the end of such license year, the expense of such audit to be borne by the carrier being audited. Each vehicle passing into or through Virginia shall be registered and licensed in Virginia and the annual registration fee to be paid for each such vehicle shall not be less than ~~thirty-three dollars~~ *$43*. For the purpose of determining such apportioned registration fees, only those motor vehicles, trailers, or semitrailers operated both within and outside the Commonwealth shall be subject to inclusion in determining the apportionment provided for herein.

8. ~~Thirteen~~ *Twenty-three* dollars plus ~~eighty~~ *80* cents per 100 pounds or major fraction thereof for each motor vehicle, trailer or semitrailer kept or used for rent or for hire or operated under a lease without a chauffeur for the transportation of passengers. An additional fee of ~~five dollars~~*$5* shall be charged if the vehicle weighs more than 4,000 pounds. This subsection does not apply to vehicles used as common carriers.

9. ~~Twenty-three~~ *Thirty-three* dollars for a taxicab or other vehicle ~~which~~ *that* is kept for rent or hire operated with a chauffeur for the transportation of passengers, and which operates or should operate under permits issued by the Department as required by law. An additional fee of ~~five dollars~~*$5* shall be charged if the vehicle weighs more than 4,000 pounds. This subsection does not apply to vehicles used as common carriers.

10. ~~Eighteen~~ *Twenty-eight* dollars for a motorcycle, with or without a sidecar. To this fee shall be added a surcharge of ~~three dollars~~*$3,* which shall be distributed as provided in § 46.2-1191.

11. ~~Twenty-three~~ *Thirty-three* dollars for a bus used exclusively for transportation to and from Sunday school or church, for the purpose of divine worship. If the empty weight of the vehicle exceeds 4,000 pounds, the fee shall be ~~twenty-eight dollars~~ *$38*.

12. ~~Thirteen~~ *Twenty-three* dollars plus ~~seventy~~ *70* cents per 100 pounds or major fraction thereof for other passenger-carrying vehicles.

13. An additional fee of ~~four dollars~~*$4* per year shall be charged and collected at the time of registration of each pickup or panel truck and each motor vehicle under subdivisions 1 through 12 of this subsection. All funds collected pursuant to this subdivision shall be paid into the state treasury and shall be set aside as a special fund to be used only for emergency medical service purposes. The moneys in the special fund shall be distributed as follows:

a. Two and one-half percent shall be distributed to the Virginia Association of Volunteer Rescue Squads;

b. Thirteen and one-half percent shall be distributed to the State Department of Health to support (i) emergency medical services training programs (excluding advanced life support classes), (ii) advanced life support training, and (iii) recruitment and retention programs (all funds for such support shall be used to recruit and retain volunteer emergency medical services personnel only, including public awareness campaigns, technical assistance programs, and similar activities). Any funds set aside for distribution under this provision and remaining undistributed at the end of any fiscal year shall revert to the Rescue Squad Assistance Fund;

c. Thirty-one and three-quarters percent shall be distributed to the Rescue Squad Assistance Fund;

d. Twenty-seven and one-quarter percent shall be available to the State Department of Health for use in emergency medical services; and

e. Twenty-five percent shall be returned by the Comptroller to the locality wherein such vehicle is registered, to provide funding for training of volunteer or salaried emergency medical service personnel of licensed, nonprofit emergency medical services agencies and for the purchase of necessary equipment and supplies for use in such locality for licensed, nonprofit emergency medical and rescue services.

The Comptroller shall clearly designate on the warrant, check, or other means of transmitting these funds that such moneys are only to be used for purposes set forth in this subdivision. Such funds shall be in addition to any local appropriations and local governing bodies shall not use these funds to supplant local funds. Each local governing body shall report annually to the Board of Health on the use of the ~~twenty-five~~*25* percent of the funds ~~which~~ *that* were returned to it. In any case in which the local governing body grants the funds to a regional emergency medical services council to be distributed to the licensed, nonprofit emergency medical and rescue services, the local governing body shall remain responsible for the proper use of the funds. If, at the end of any fiscal year, a report on the use of the ~~twenty-five~~*25* percent of the funds for that year has not been received from a local governing body, any funds due to that local governing body for the next fiscal year shall be retained until such time as the report has been submitted to the Board.

B. All motor vehicles, trailers, and semitrailers registered as provided in subsection B of § 46.2-646 shall pay a registration fee equal to one-twelfth of all fees required by subsection A of this section or § 46.2-697 for such motor vehicle, trailer, or semitrailer, computed to the nearest cent, multiplied by the

number of months in the registration period for such motor vehicles, trailers, and semitrailers.

C. The manufacturer's shipping weight or scale weight shall be used for computing all fees required by this section to be based upon the weight of the vehicle.

D. The applicant for registration bears the burden of proof that the vehicle for which registration is sought is entitled by weight, design, and use to be registered at the fee tendered by the applicant to the Commissioner or to his authorized agent.

§ 46.2-697. Fees for vehicles not designed or used for transportation of passengers.

A. Except as otherwise provided in this section, the fee for registration of all motor vehicles not designed and used for the transportation of passengers shall be ~~thirteen dollars~~ *$23* plus an amount determined by the gross weight of the vehicle or combination of vehicles of which it is a part, when loaded to the maximum capacity for which it is registered and licensed, according to the schedule of fees set forth in this section. For each 1,000 pounds of gross weight, or major fraction thereof, for which any such vehicle is registered, there shall be paid to the Commissioner the fee indicated in the following schedule immediately opposite the weight group and under the classification established by the provisions of subsection B of § 46.2-711 into which such vehicle, or any combination of vehicles of which it is a part, falls when loaded to the maximum capacity for which it is registered and licensed. The fee for a pickup or panel truck shall be ~~twenty-three dollars~~ *$33* if its gross weight is 4,000 pounds or less, and ~~twenty-eight dollars~~ *$38* if its gross weight is 4,001 pounds through 6,500 pounds. The fee shall be ~~twenty-nine~~ *$39* dollars for any motor vehicle with a gross weight of 6,501 pounds through 10,000 pounds.

Fee Per Thousand Pounds of Gross Weight

Gross Weight Groups (pounds)	Private Carriers	For Rent or For Hire Carriers
10,001 - 11,000	$2.60	$4.75
11,001 - 12,000	2.80	4.90
12,001 - 13,000	3.00	5.15
13,001 - 14,000	3.20	5.40
14,001 - 15,000	3.40	5.65
15,001 - 16,000	3.60	5.90
16,001 - 17,000	4.00	6.15
17,001 - 18,000	4.40	6.40
18,001 - 19,000	4.80	7.50
19,001 - 20,000	5.20	7.70
20,001 - 21,000	5.60	7.90
21,001 - 22,000	6.00	8.10
22,001 - 23,000	6.40	8.30
23,001 - 24,000	6.80	8.50
24,001 - 25,000	6.90	8.70
25,001 - 26,000	6.95	8.90
26,001 - 27,000	8.25	10.35
27,001 - 28,000	8.30	10.55
28,001 - 29,000	8.35	10.75
29,001 - 40,000	8.45	10.95
40,001 - 45,000	8.55	11.15
45,001 - 50,000	8.75	11.25
50,001 - 55,000	9.25	13.25
55,001 - 76,000	11.25	15.25
76,001 - 80,000	13.25	16.25

For all such motor vehicles exceeding a gross weight of 6,500 pounds, an additional fee of ~~five dollars~~*$5* shall be imposed.

B. In lieu of registering any motor vehicle referred to in this section for an entire licensing year, the owner may elect to register the vehicle only for one or more quarters of a licensing year, and in such case, the fee shall be ~~twenty-five~~*25* percent of the annual fee plus ~~five dollars~~*$5* for each quarter that the vehicle is registered.

C. When an owner elects to register and license a motor vehicle under subsection B of this section, the provisions of §§ 46.2-646 and 46.2-688 shall not apply.

D. Notwithstanding any other provision of law, no vehicle designed, equipped, and used to tow disabled or inoperable motor vehicles shall be required to register in accordance with any gross weight other than the gross weight of the towing vehicle itself, exclusive of any vehicle being towed.

E. All registrations and licenses issued for less than a full year shall expire on the date shown on the license and registration.

§ 46.2-698. Fees for farm vehicles.

A. The fees for registration of farm motor vehicles having gross weights of 7,500 pounds or more, when such vehicles are used exclusively for farm use as defined in this section, shall be one-half of the fee per 1,000 pounds of gross weight for private carriers as calculated under the provisions of § 46.2-697 and one-half of the fee for overload permits under § 46.2-1128, but the annual registration fee to be paid for each farm vehicle shall not be less than ~~fifteen~~ ~~dollars~~ *$25*.

B. A farm motor vehicle is used exclusively for farm use:

1. When owned by a person who is engaged either as an owner, renter, or operator of a farm of a size reasonably requiring the use of such vehicle or vehicles and when such vehicle is:

a. Used in the transportation of agricultural commodities, poultry, dairy products, or livestock of the farm he is working to market, or to other points for sale or processing, or when used to transport materials, tools, equipment, or supplies which are to be used or consumed on the farm he is working, or when used for any other transportation incidental to the regular operation of such farm;

b. Used in transporting forest products, including forest materials originating on a farm or incident to the regular operation of a farm, to the farm he is working or transporting for any purpose forest products which originate on the farm he is working; or

c. Used in the transportation of farm produce, supplies, equipment, or materials to a farm not worked by him, pursuant to a mutual cooperative agreement.

2. When the nonfarm use of such motor vehicle is limited to the personal use of the owner and his immediate family in attending church or school, securing medical treatment or supplies, or securing other household or family necessities.

C. As used in this section, the term "farm" shall include one or more farms, orchards, or ranches, but does not include a tree farm unless it is part of what otherwise is a farm.

D. The first application for registration of a vehicle under this section shall be made on forms provided by the Department and shall include:

1. The location and acreage of each farm on which the vehicle to be registered is to be used;

2. The type of agricultural commodities, poultry, dairy products or livestock produced on such farms and the approximate amounts produced annually;

3. A statement, signed by the vehicle's owner, that the vehicle to be registered will only be used for one or more of the purposes specified in subsection B of this section; and

4. Other information required by the Department;

The above information is not required for the renewal of a vehicle's registration under this section.

E. The Department shall issue appropriately designated license plates for those motor vehicles registered under this section. The manner in which such license plates are designated shall be at the discretion of the Commissioner.

F. The owner of a farm vehicle shall inform the Commissioner within ~~thirty~~*30* days or at the time of his next registration renewal, whichever comes first, when such vehicle is no longer used exclusively for farm use as defined in this section, and shall pay the appropriate registration fee for the vehicle based on its type of operation. It shall constitute a Class 2 misdemeanor to: (i) operate or to permit the operation of any farm motor vehicle for which the fee for registration and license plates is herein prescribed on any highway in the Commonwealth without first having paid the prescribed registration fee; or (ii) operate or permit the operation of any motor vehicle, registered under this section, for purposes other than as provided under subsection B of this section; or (iii) operate as a for-hire vehicle.

G. Nothing in this section shall affect the exemptions of agricultural and horticultural vehicles under §§ 46.2-664 through 46.2-670.

H. Notwithstanding other provisions of this section, vehicles licensed under this section may be used by volunteer rescue squad members and volunteer firefighters in responding to emergency calls, in reporting for regular duty, and in attending squad meetings and drills.

§ 46.2-700. Fees for vehicles for transporting well-drilling machinery and specialized mobile equipment.

A. The fee for registration of any motor vehicle, trailer, or semitrailer on which well-drilling machinery is attached and which is permanently used solely for transporting the machinery shall be ~~fifteen~~ ~~dollars~~ *$25*.

B. The fee for the registration of specialized mobile equipment shall be ~~fifteen~~ ~~dollars~~ *$25*. "Specialized mobile equipment" shall mean any self-propelled motor vehicle manufactured for a specific purpose, other than for the transportation of passengers or property, which is used on a job site and whose movement on any highway is incidental to the purpose for which it was designed and

manufactured. The vehicle must be constructed to fall within all size and weight requirements as contained in §§ 46.2-1105, 46.2-1110, 46.2-1113 and Article 17 (§ 46.2-1122 et seq.) of Chapter 10 of this title and must be capable of maintaining sustained highway speeds of ~~forty~~*40* miles per hour or more. Vehicles registered under this section shall be exempt from the requirements of § 46.2-1157.

C. Specialized mobile equipment which cannot maintain a sustained highway speed in excess of ~~forty~~*40* miles per hour, and trailers or semitrailers which are designed and manufactured for a specific purpose and whose movement on the highway is incidental to the purpose for which it was manufactured and which are not designed or used to transport persons or property, shall not be required to be registered under this chapter.

§ 46.2-702.1. Distribution of certain revenue.

A. An amount equivalent to the net additional revenues generated from the increases in the registration fees under §§ 46.2-694, 46.2-697, 46.2-698, and 46.2-700 effective July 1, 2004, pursuant to enactments of the 2004 Session of the General Assembly, shall be deposited by the Comptroller into the Transportation Trust Fund established under § 33.1-23.03:1. As provided in subsection A of § 58.1-638, of such amount deposited to the Transportation Trust Fund pursuant to this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund, and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

§ 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~~*80* 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.

"Earned income" means wages, salaries, professional fees, or amounts received as compensation for professional services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a business that represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. Earned income does not include interest or dividend income, capital gains, income from investments, or similar types of passive income.

"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

paid at a location in Virginia.

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

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

"Intangible expenses and costs" means:

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

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

3. Royalty, patent, technical and copyright fees;

4. Licensing fees; and

5. Other similar expenses and costs.

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

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

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

"Related entity" means:

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

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

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

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

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

"Resident estate or trust" means:

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

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

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

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

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

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

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

"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;

Five percent on income in excess of $5,000, but not in excess of $12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of $5,000 but not in excess of $14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of $5,000 but not in excess of $15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of $5,000 but not in excess of $16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

Five percent on income in excess of $5,000 but not in excess of $17,000 for taxable years beginning January 1, 1990;

Five and three-quarters percent on income in excess of $12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of $14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five and three-quarters percent on income in excess of $15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five and three-quarters percent on income in excess of $16,000 for taxable years beginning January 1, 1989, through December 31, 1989; ~~and~~

Five and three-quarters percent on income in excess of $17,000 for taxable years beginning on ~~and~~ *or* after January 1, 1990, *but before January 1, 2004;*

Five and three-quarters percent on income in excess of $17,000 but not in excess of $100,000 for taxable years beginning on or after January 1, 2004;

Six and one-quarter percent on income in excess of $100,000 but not in excess of $150,000 for taxable years beginning on or after January 1, 2004; and

Six and one-half percent on income in excess of $150,000 for taxable years beginning on or after January 1, 2004.

§ 58.1-321. Exemptions and exclusions.

A. No tax levied pursuant to § 58.1-320 is imposed, nor any return required to be filed by:

1. A single individual where the Virginia adjusted gross income for such taxable year is less than $3,000 for taxable years beginning before January 1, 1987; and less than $5,000 for taxable years beginning on ~~and~~ *or* after January 1, 1987~~;~~*, but before January 1, 2004.*

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than $5,000 for taxable years beginning on or after January 1, 2004.

2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year is less than ~~$3,000 for taxable years beginning before January 1, 1987; and less than~~ $8,000 for taxable years beginning on ~~and~~ *or* after January 1, 1987 (or one-half of such amount in the case of a married individual filing a separate return) *but before January 1, 2004.*

An individual and spouse if their combined Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 is less than $8,000 for taxable years beginning on or after January 1, 2004 (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2005; and less than $9,000 for taxable years beginning on or after January 1, 2005 (or one-half of such amount in the case of a married individual filing a separate return).

For the purposes of this section "Virginia adjusted gross income" means federal adjusted gross income for the taxable years with the modifications specified in § 58.1-322 B, § 58.1-322 C and the additional deductions allowed under § 58.1-322 D 2 b and D 5 *for taxable years beginning before January 1, 2004. For taxable years beginning on or after January 1, 2004, Virginia adjusted gross income means federal adjusted gross income with the modifications specified in subsections B and C of § 58.1-322.*

B. Persons in the armed forces of the United States stationed on military or naval reservations within Virginia who are not domiciled in Virginia shall not be held liable to income taxation for compensation received from military or naval service.

§ 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.]

9. 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.

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

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

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

3. [Repealed.]

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

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

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

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

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

7, 8. [Repealed.]

9. [Expired.]

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

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

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

13. [Repealed.]

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

15, 16. [Repealed.]

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 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~~ *Virginia adjusted gross income as defined in § 58.1-321*:

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 for single individuals for taxable years beginning on ~~and~~ *or* after January 1, 1989, *but before January 1, 2005; 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 or 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~~ *or* after January 1, 1988, *but before January 1, 2005; and $1,000 for taxable years beginning on or after January 1, 2005,* for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. For taxable years beginning on ~~and~~ *or* 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 *in the amount of $800 for the taxable year*.

~~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, 2004,* a deduction in the amount of $12,000 for taxpayers age 65 or older, or $6,000 for taxpayers age 62 through 64.

a. The age deduction for all taxable years beginning on or after January 1, 2004, shall be determined in accordance with the following table and as adjusted herein:

Taxable Years	*Applicable Deduction*
1. Beginning on or after January 1, 2004, but before January 1, 2011	*$12,000 for individuals who are 65 or older in the taxable year*
2. Beginning on or after January 1, 2011	*$12,000 for individuals who are at their retirement age or older in the taxable year*
3. Beginning on or after January 1, 2004,	*$6,000 for individuals born on or before December 31, 1941, who did not reach the age of 65 in the taxable year*

Except as provided in subdivision b, the deductions provided in this table shall be reduced by $1 for each $1 by which the taxpayer's modified federal adjusted gross income exceeds $40,000 for single taxpayers and $64,000 for married taxpayers.

For married taxpayers filing separately, whether or not on a combined return, with combined modified federal adjusted gross income of both spouses in excess of $64,000 for the taxable year, the age deduction allowed for each individual spouse shall be reduced by $1 for each $2 by which combined modified federal adjusted gross income exceeds $64,000 pursuant to subdivision 5 b under the following circumstances.

b. 1. There shall be no reduction to the amount of the age deduction for any taxpayer who was at least 65 years old as of December 31, 2003, provided that the taxpayer's modified federal adjusted gross income for the taxable year is not in excess of $200,000.

There shall be no reduction to the amount of the $6,000 age deduction available to any taxpayer who was at least 62 but less than 65 years old as of December 31, 2003, provided that the taxpayer's modified federal adjusted gross income for the taxable year is not in excess of $200,000.

2. If the taxpayer is married, such $200,000 limitation shall apply to the combined modified federal adjusted gross income of both spouses for the taxable year regardless of whether or not such married taxpayers file separate individual income tax returns or a joint individual income tax return.

c. For the purposes of subdivisions D 5 a and b, "modified federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and

other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

For purposes of subdivision D 5 a, "retirement age" means the same as such term is defined under 42 U.S.C. § 416, as may be amended from time to time.

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.

§ 58.1-324. Husband and wife.

For purposes of this section:

"Family Virginia taxable income" means, for the relevant taxable year, the combined Virginia taxable income of a husband and wife who are not legally separated.

A. If the federal taxable income of husband or wife is determined on a separate federal return, their Virginia taxable incomes shall be separately determined, *if family Virginia taxable income is less than or*

equal to $100,000.

B. If family Virginia taxable income exceeds $100,000 for the taxable year, the individual income tax shall be calculated on the family Virginia taxable income, and each spouse shall be jointly and severally liable for such tax except as provided in subdivision B 2.

1. In cases where both spouses have earned income as such term is defined in § 58.1-302, a two-earner adjustment shall be applied to reduce the calculated tax liability on the following basis:

If taxable income is:	*The deduction shall equal:*
In excess of $100,000 but not in excess of $125,000	*4.5 percent two-earner credit*
In excess of $125,000 but not in excess of $150,000	*4 percent two-earner credit*
In excess of $150,000 but not in excess of $200,000	*3 percent two-earner credit*
In excess of $200,000 but not in excess of $300,000	*2 percent two-earner credit*
In excess of $300,000	*1 percent two-earner credit, not to exceed a maximum credit of $1,132*

2. In cases where family Virginia taxable income exceeds $100,000 for the taxable year and separate income tax returns are filed, each spouse shall be severally liable for the tax calculated on family Virginia taxable income on a pro rata basis. Each spouse's individual income tax liability shall be that portion of the income tax on family Virginia taxable income as the spouse's Virginia taxable income for the taxable year bears to the combined Virginia taxable income of both spouses for the taxable year.

~~B~~*C.* If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

1. Their tax shall be determined on their joint Virginia taxable income; or

2. Separate taxes may be determined on their separate Virginia taxable incomes if they so elect, *and the family Virginia taxable income is less than or equal to $100,000.*

~~C~~*D.* Where husband and wife have not separately reported and claimed items of income, exemptions and deductions for federal income tax purposes, and have not elected to file a joint Virginia income tax return, such items allowable for Virginia income tax purposes shall be allocated and adjusted as follows:

1. Income shall be allocated to the spouse who earned the income or with respect to whose property the income is attributable.

2. Allowable deductions with respect to trade, business, production of income, or employment shall be allocated to the spouse to whom attributable.

3. Nonbusiness deductions, where properly taken for federal income tax purposes, shall be allowable for Virginia income tax purposes, but shall be allocable between husband and wife as they may mutually agree. For this purpose, "nonbusiness deductions" consist of allowable deductions not described in subdivision 2 of this subsection.

4. Where the standard deduction or low income allowance is properly taken pursuant to subdivision D 1 a of § 58.1-322 such deduction or allowance shall be allocable between husband and wife as they may mutually agree.

5. Personal exemptions properly allowable for federal income tax purposes shall be allocated for Virginia income tax purposes as husband and wife may mutually agree; however, exemptions for taxpayer and spouse together with exemptions for old age and blindness must be allocated respectively

to the spouse to whom they relate.

~~D~~*E*. Where allocations are permitted to be made under subsection ~~C~~ *D* pursuant to agreement between husband and wife, and husband and wife have failed to agree as to those allocations, such allocations shall be made between husband and wife in a manner corresponding to the treatment for federal income tax purposes of the items involved, under regulations prescribed by the Department of Taxation.

§ 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~~*48* contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673 (2) of the Omnibus Budget Reconciliation Act of 1981.

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

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

2. For taxable years beginning on or after January 1, 2005, any individual or married persons, eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu of the credit authorized under subdivision B 1, claim a credit against the tax imposed pursuant to § 58.1-320 in an amount equal to 20 percent of the credit claimed by the individual or married persons for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year. In no case shall a household be allowed a credit pursuant to this subdivision and subdivision B 1 for the same taxable year.

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

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

D. Notwithstanding any other provision of this section, ~~such~~ *no* credit shall ~~not~~ be allowed *pursuant to subsection B* in any taxable year in which the individual, the individual's spouse, or both, or any person claimed as a dependent on such individual's or married persons' income tax return, claims one or any combination of the following on his or their income tax return for such taxable year:

1. The subtraction under subdivision C 11 of § 58.1-322;

2. The subtraction under subdivision C 23 of § 58.1-322;

3. The subtraction under subdivision C 24 of § 58.1-322;

4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision D 2 ~~a~~ *b* of § 58.1-322; or

5. The deduction under subdivision D 5 of § 58.1-322.

§ 58.1-341. Returns of individuals.

A. On or before May 1 of each year if an individual's taxable year is the calendar year, or on or before the fifteenth day of the fourth month following the close of a taxable year other than the calendar year, an income tax return under this chapter shall be made and filed by or for:

1. Every resident individual, except as provided in § 58.1-321, required to file a federal income tax return for the taxable year, or having Virginia taxable income for the taxable year;

2. Every nonresident individual having Virginia taxable income for the taxable year, except as provided in § 58.1-321.

B. If the federal income tax liability of husband or wife is determined on a separate federal return, their Virginia income tax liabilities and returns shall be separate *except as provided under § 58.1-324*. If the federal income tax liabilities of husband and wife (other than a husband and wife described in subdivision 2 of subsection A) are determined on a joint federal return, or if neither files a federal return:

1. They shall file a joint Virginia income tax return, and their tax liabilities shall be joint and several; or

2. They may elect to file separate Virginia income tax returns if they comply with the requirements of the Department in setting forth information (whether or not on a single form), in which event their tax liabilities shall be separate, *except as provided under § 58.1-324 or* unless such husband and wife file separately on a combined return. The election permitted under this subsection may be made or changed at any time within three years from the last day prescribed by law for the timely filing of the return.

C. If either husband or wife is a resident and the other is a nonresident, they shall file separate Virginia income tax returns on such single or separate forms as may be required by the Department, in which event their tax liabilities shall be separate except as provided in subsection D, unless both elect to determine their joint Virginia taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

D. If husband and wife file separate Virginia income tax returns on a single form pursuant to subsection B or C, and:

1. If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the Department to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable;

2. If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses.

The provisions of this subsection shall not apply if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

E. The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

F. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

§ 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:

"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.

"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.

§ 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.

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

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

C. Where ~~a partner's~~*an owner's* distributive shares of an item of ~~partnership~~*pass-through entity* income, gain, loss or deduction is determined for federal income tax purposes by special provision in the ~~partnership~~*pass-through entity* agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the ~~partner's~~*owner's* distributive share of such item, and any modification required with respect thereto, shall be determined as if the

~~partnership~~*pass-through entity* agreement made no special provision with respect to such item.

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

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

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

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

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

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

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

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

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

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

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

A. Any pass-through entity that fails to file a return required by this article within the time required shall be liable for a penalty of $200 if the failure is for not more than one month, with an additional $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 subsection 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, 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.

§ 58.1-402. 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 or 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 related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs and intangible expenses and costs if one of the following applies:

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

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

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

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

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

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth

or of any political subdivision or instrumentality of this Commonwealth.

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

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

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

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

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

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

9. [Repealed.]

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

11. [Repealed.]

12. [Expired.]

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

14. For taxable years beginning on or after January 1, 1995, the amount for "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.

15. For taxable years beginning on or after January 1, 2000, the total amount 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.

16. 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.

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

18. For 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 farming businesses; (b) any business 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.

§ 58.1-520. Definitions.

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's Virginia state or local income tax refund payable pursuant to §§ 58.1-309 and 58.1-546. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of ~~§ 58.1-324 B 2~~ *subdivision C 2 of § 58.1-324*.

§ 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~~ *four* 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.

§ 58.1-604. Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of ~~three~~ *four* and one-half percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

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

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

5. The use tax shall not apply to out-of-state mail order catalog purchases totaling $100 or less during any calendar year.

§ 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts.

In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is ~~three~~ *four* and one-half percent on all tangible personal property except motor vehicles, which shall be taxed at the rate of ~~three~~ *four and one-half* percent; aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of $1,000.

For purposes of this section the words "motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, the word "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under §§ 58.1-604, 58.1-605, 58.1-1402, 58.1-1502, or § 58.1-2402 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

§ 58.1-608.3. Entitlement to certain sales tax revenues.

A. As used in this section, the following words and terms have the following meanings, unless some other meaning is plainly intended:

"Bonds" means any obligations of a municipality for the payment of money.

"Cost," as applied to any public facility or to extensions or additions to any public facility, includes: (i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of the capital stock of the corporation owning the public facility and the amount to be paid to discharge any obligations in order to vest title to the public facility or any part of it in the municipality; (ii) expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land, property, rights, easements and franchises acquired; (v) the cost of improvements, property or equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of construction or reconstruction; (viii) the cost of all labor, materials, machinery and equipment; (ix) financing charges; (x) interest before and during construction and for up to one year after completion of construction; (xi) start-up costs and operating capital; (xii) payments by a municipality of its share of the cost of any multi-jurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to the financing of the public facility. Any obligation or expense incurred by the public facility in connection with any of the foregoing items of cost may be regarded as a part of the cost.

"Municipality" means any county, city, town, authority, commission, or other public entity.

"Public facility" means (i) any auditorium, coliseum, convention center, or conference center, which is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings, conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is owned by a foundation whose sole purpose is to benefit a state-supported university and which is attached to and is an integral part of such facility, together with any lands reasonably necessary for the conduct of the operation of such events; or (iii) any hotel which is attached to and is an integral part of such facility. However, such public facility must be located in a city with a population of at least 24,200 but no more than 24,500 as determined by the 1990 United States Census, at least 50,000 but no more than 52,500, at least 95,000 but no more than 105,000, or at least 130,000 but no more than 135,000. Any property, real, personal, or mixed, which is necessary or desirable in connection with any such auditorium, coliseum, convention center, or conference center, including, without limitation, facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. In addition, only a new public facility, or a public facility which will undergo a substantial and significant renovation or expansion, shall be eligible under subsection B of this section. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least fifty percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least fifty percent over that existing in the preexisting facility and shall have begun after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.) of Title 58.1, as limited herein. "Sales tax revenues" does not include the revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § 33.1-23.03:1 *as computed pursuant to subsection A of § 58.1-638*, nor shall it include the one percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to § 58.1-638 D on the basis of school age population. *Sales tax revenues shall also not include the revenue generated by the one percent sales and use tax increase enacted by the 2004 Session of the General Assembly.*

B. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, or (v) on or after July 1, 2001, but before July 1, 2004, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such bonds, which entitlement shall not exceed ~~thirty~~*30* years, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed.

C. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any bonds. Any appropriation

made pursuant to this section shall be made only from sales tax revenues derived from the public facility for which bonds may have been issued to pay the cost, in whole or in part, of such public facility.

§ 58.1-609.3. Commercial and industrial 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. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling, extraction, refining, or processing of oil, gas, natural gas and coalbed methane gas.

3. Tangible personal property sold or leased to (i) a public service corporation subject to a state franchise or license tax upon gross receipts, (ii) a telecommunications company as defined in § 58.1-400.1 or (iii) a telephone company chartered in the Commonwealth which is exclusively a local mutual association and is not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof, for use or consumption by such corporation, company, person or mutual association directly in the rendition of its public service; and tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by ~~motor vehicle or~~ railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

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

6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

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

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

9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas production, including gas, natural gas, and coalbed methane gas.

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

11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of

4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or photocopying of products for sale or resale.

12. From July 1, 1994, and ending July 1, 2006, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, refining, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," "refining," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind possessing space flight capability, including the components thereof, irrespective of whether such facility, system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal property placed on or used aboard any orbital or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and services provided to operate and maintain launch facilities, launch equipment, payload processing facilities and payload processing equipment used to conduct spaceport activities.

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

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

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

A. ~~Subject to the conditions of subsections D and E, the~~ *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~~ *midnight on June 30, 2004,* 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 *as such subsection existed prior to July 1, 2004, in accordance with the law in effect at the relevant time,* (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,~~ *On and after July 1, 2004,* 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.

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 80 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, the rate of tax on sales of food purchased for human consumption for any 12-month period beginning on or after April 1, 2001, shall not be reduced below the rate then in effect for the Commonwealth's current fiscal year if:~~

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

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

~~E. If the tax rate on food purchased for human consumption remains the same for the period January 1, 2000, through March 31, 2001, and the subsequent 12-month period beginning on April 1, 2001, or with respect to any consecutive 12-month periods beginning on and after April 1, 2001, the tax rate on such food shall remain the same unless none of the conditions described in subsection D have occurred, in which event the tax rate on food purchased for human consumption for the immediately following 12-month period shall be equal to the next lowest tax rate listed in subsection A.~~

§ 58.1-614. Vending machine sales.

A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on ~~four~~ *five* and one-half percent of such wholesale purchases.

B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A of this section.

C. The provisions of subsections A and B of this section shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than ~~ten~~*10* cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section or § 58.1-628, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each county or city in which he has machines.

§ 58.1-615. Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period ~~which~~ *that* varies ~~fifty-two~~*52* to ~~fifty-three~~*53* weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when,

in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. 1. In addition to the amounts required under the provisions of this section and § 58.1-616, any dealer as defined by § 58.1-612 or direct payment permit holder pursuant to § 58.1-624, with taxable sales and purchases of $1,300,000 or greater for the ~~twelve~~*12*-month period beginning July 1, and ending June 30 of the immediately preceding calendar year, shall be required to make a payment equal to 90 percent of the sales and use tax liability for the previous June. Such tax payments shall be made on or before the 30th day of June, if payment is made by electronic funds transfer, as defined in § 58.1-202.1. If payment is made by other than electronic funds transfer, such payment shall be made on or before the ~~25th~~ *twenty-fifth* day of June. For purposes of this provision, taxable sales or purchases shall be computed without regard to the number of certificates of registration held by the dealer. Every dealer or direct payment permit holder shall be entitled to a credit for the payment under this subsection on the return for June of the current year due July 20. The provisions of this subsection shall not apply to persons who are required to file only a Form ST-7, Consumer User Tax Return.

2. In lieu of the penalties provided in § 58.1-635, except with respect to fraudulent returns, failure to make a timely payment or full payment of the sales and use tax liability as provided in this subsection shall subject the dealer or direct payment permit holder to a penalty of six percent of the amount of tax underpayment that should have been properly paid to the Tax Commissioner. Interest will accrue as provided in § 58.1-15. The payment required by this subsection shall become delinquent on the first day following the due date set forth in this subsection if not paid.

3. This subsection shall be effective until June 1, 2005.

§ 58.1-627. Bracket system for tax at rate of four and one-half percent.

The following brackets of prices shall be used for the collection of the tax imposed by this chapter:

$0.00	to	~~$0.14~~*$0.11*	no tax	
~~.15~~ *.12*	to	~~.42~~ *.33*	1¢ tax	
~~.43~~ *.34*	to	~~.71~~ *.55*	2¢ tax	
~~.72~~ *.56*	to	~~.99~~ *.77*	3¢ tax	
~~1.00~~ *.78*	to	~~1.28~~ *.99*	4¢ tax	
~~1.29~~*1.00*	to	~~1.57~~ *1.22*	5¢ tax	
~~1.58~~*1.23*	to	~~1.85~~ *1.44*	6¢ tax	
~~1.86~~*1.45*	to	~~2.14~~ *1.66*	7¢ tax	
~~2.15~~*1.67*	to	~~2.42~~ *1.88*	8¢ tax	
~~2.43~~*1.89*	to	~~2.71~~ *2.11*	9¢ tax	
~~2.72~~*2.12*	to	~~2.99~~ *2.33*	10¢ tax	
~~3.00~~*2.34*	to	~~3.28~~ *2.55*	11¢ tax	
~~3.29~~*2.56*	to	~~3.57~~ *2.77*	12¢ tax	
~~3.58~~*2.78*	to	~~3.85~~ *2.99*	13¢ tax	
~~3.86~~*3.00*	to	~~4.14~~ *3.22*	14¢ tax	
~~4.15~~*3.23*	to	~~4.42~~ *3.44*	15¢ tax	

~~4.43~~*3.45*	to	~~4.71~~ *3.66*	16¢ tax
~~4.72~~*3.67*	to	~~5.00~~ *3.88*	17¢ tax
3.89	*to*	*4.11*	*18¢ tax*
4.12	*to*	*4.33*	*19¢ tax*
4.34	*to*	*4.55*	*20¢ tax*
4.56	*to*	*4.77*	*21¢ tax*
4.78	*to*	*5.00*	*22¢ tax*

On transactions ~~over~~ ~~five~~ ~~dollars~~ *greater than $5*, the tax shall be computed at ~~three~~ *four* and one-half percent, one-half cent or more being treated as one cent. If a dealer can show to the satisfaction of the Tax Commissioner that more than ~~eighty-five~~ *85* percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ~~ten~~*10* cents or less each, and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at prices of eleven cents or more.

§ 58.1-628. Bracket system for combined state and local tax.

The following brackets of prices shall be used for the collection of the combined state and local tax:

$0.00	to	$0~~.11~~ *.09*	no tax
~~.12~~ *.10*	to	~~.33~~ *.27*	1¢ tax
~~.34~~ *.28*	to	~~.55~~ *.45*	2¢ tax
~~.56~~ *.46*	to	~~.77~~ *.63*	3¢ tax
~~.78~~ *.64*	to	~~.99~~ *.81*	4¢ tax
~~1.00~~ *.82*	to	~~1.22~~ *.99*	5¢ tax
~~1.23~~ *1.00*	to	~~1.44~~ *1.18*	6¢ tax
~~1.45~~ *1.19*	to	~~1.66~~ *1.36*	7¢ tax
~~1.67~~ *1.37*	to	~~1.88~~ *1.54*	8¢ tax
~~1.89~~ *1.55*	to	~~2.11~~ *1.72*	9¢ tax
~~2.12~~ *1.73*	to	~~2.33~~ *1.90*	10¢ tax
~~2.34~~ *1.91*	to	~~2.55~~ *2.09*	11¢ tax
~~2.56~~ *2.10*	to	~~2.77~~ *2.27*	12¢ tax
~~2.78~~ *2.28*	to	~~2.99~~ *2.45*	13¢ tax
~~3.00~~ *2.46*	to	~~3.22~~ *2.63*	14¢ tax
~~3.23~~ *2.64*	to	~~3.44~~ *2.81*	15¢ tax

~~3.45~~ *2.82*	to	~~3.66~~ *2.99*	16¢ tax
~~3.67~~ *3.00*	to	~~3.88~~ *3.18*	17¢ tax
~~3.89~~ *3.19*	to	~~4.11~~ *3.36*	18¢ tax
~~4.12~~ *3.37*	to	~~4.33~~ *3.54*	19¢ tax
~~4.34~~ *3.55*	to	~~4.55~~ *3.72*	20¢ tax
~~4.56~~ *3.73*	to	~~4.77~~ *3.90*	21¢ tax
~~4.78~~ *3.91*	to	~~5.00~~ *4.09*	22¢ tax
4.10	*to*	*4.27*	*23¢ tax*
4.28	*to*	*4.45*	*24¢ tax*
4.46	*to*	*4.63*	*25¢ tax*
4.64	*to*	*4.81*	*26¢ tax*
4.82	*to*	*5.00*	*27¢ tax*

On transactions ~~over~~ ~~five~~ ~~dollars~~ *greater than $5*, the tax shall be computed at ~~four~~*five* and one-half percent, one half cent or more being treated as one cent. The foregoing bracket system shall not relieve the dealer from the duty and liability to remit an amount equal to ~~four~~*five* and one-half percent of his gross taxable sales as provided in this chapter. If the dealer, however, can show to the satisfaction of the Tax Commissioner that more than ~~eighty-five~~*85* percent of the total dollar volume of his gross taxable sales during the taxable month was from individual sales at prices of ~~ten~~*10* cents or less each and that he was unable to adjust his prices in such manner as to prevent the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at prices of ~~eleven~~*11* cents or more.

§ 58.1-638. Disposition of state sales and use tax revenue; localities' share; Game Protection Fund.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly, *computed without regard to revenues generated from sales and use taxes on food purchased for human consumption as defined in § 58.1-611.1,* shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth.

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of $12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: sixty percent to MWAA, up to a maximum annual amount of two million dollars, and forty percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however, shall receive less than $50,000 nor more than $2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWAA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be used to support the public transportation administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and maintenance parts and supplies for public transportation at a state share of ~~eighty~~ *80* percent in 2002 and ~~ninety-five~~*95* percent in 2003 and succeeding years. These amounts may be used to support up to ~~ninety-five~~*95* percent of the local or nonfederal share of capital project costs for public transportation and ridesharing equipment, facilities, and associated costs. Capital costs may include debt service payments on local or agency transit bonds. The term "borne by the locality" means the local share eligible for state assistance consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance received by the locality.

c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth Transportation Board as follows:

(1) Funds for special programs, which shall include ridesharing, experimental transit, and technical assistance, shall not exceed 1.5 percent of the Fund.

(2) The Board may allocate these funds to any locality or planning district commission to finance up to eighty percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

(3) Funds allocated for experimental transit projects may be paid to any local governing body, transportation district commission, or public corporation or may be used directly by the Department of Rail and Public Transportation for the following purposes:

(a) To finance up to ~~ninety-five~~*95* percent of the capital costs related to the development, implementation and promotion of experimental public transportation and ridesharing projects approved by the Board.

(b) To finance up to ~~ninety-five~~*95* percent of the operating costs of experimental mass transportation and ridesharing projects approved by the Board for a period of time not to exceed twelve months.

(c) To finance up to ~~ninety-five~~*95* percent of the cost of the development and implementation of any other project designated by the Board where the purpose of such project is to enhance the provision and

use of public transportation services.

d. Funds allocated for public transportation promotion and operation studies may be paid to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(1) At the approval of the Board to finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(2) To finance up to ~~fifty~~ *50* percent of the local share of public transportation operations planning and technical study projects approved by the Board.

e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

f. The remaining ~~twenty-five~~*25* percent shall be distributed for capital purposes on the basis of ~~ninety-five~~*95* percent of the nonfederal share for federal projects and ~~ninety-five~~*95* percent of the total costs for nonfederal projects. In the event that total capital funds available under this subdivision are insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit property in the same proportion that such capital expenditure bears to the statewide total of capital projects.

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least ~~twenty~~ *20* percent of the nonfederal share of the total project cost.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use ~~ninety-five~~*95* percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include twenty percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of this Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis as certified to the Comptroller by the Department of Education, of the number of children in each county and city according to the most recent statewide census of school population

taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter provided. No special school population census, other than a statewide census, shall be used as the basis of apportionment and distribution except that in any calendar year in which a statewide census is not reported, the Department of Education shall adjust such school population figures by the same percent of annual change in total population estimated for each locality by The Center for Public Service. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last preceding school population census, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such census and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of $13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than ~~thirty~~*30* days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.1, is equal to or in excess of $35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than $35 million.

F. Beginning July 1, 2004, of the revenue generated by a one percent sales and use tax, pursuant to enactments of the 2004 Session of the General Assembly increasing the state sales and use tax to four and one-half percent, in each fiscal year, unless otherwise provided in the general appropriation act, the Comptroller shall transfer $30 million to the Virginia Natural and Historic Resources Fund established under § 10.1-2135. To accomplish such transfer, beginning with the Commonwealth's fiscal year starting on July 1, 2004, the Comptroller shall transfer $15 million in December and $15 million in June of each fiscal year to the Virginia Natural and Historic Resources Fund.

~~F~~*G*. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

~~G~~*H*. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

§ 58.1-639. Transitional provisions.

A. To the extent of any increase in the state sales and use tax rate enacted by the ~~1986 Special~~ *2004* Session of the Virginia General Assembly, the Tax Commissioner, upon application of the purchaser in accordance with regulations promulgated by the Commissioner, shall have the authority to refund state sales or use taxes paid on purchases of tangible personal property made pursuant to bona fide real estate construction contracts, contracts for the sale of tangible personal property, and leases, provided that the real estate construction contract, contract for the sale of tangible personal property or lease is entered into prior to the date of enactment of the increase of the state sales and use tax rate; and further provided that the date of delivery of the tangible personal property is on or before ~~March 30, 1987~~ *September 30, 2004*. The term "bona fide contract," when used in this section in relation to real estate construction contracts, shall include but not be limited to those contracts which are entered into prior to the enactment of the increase in the state sales and use tax rate, provided that such contracts include plans and specifications.

B. Notwithstanding the foregoing ~~March 30, 1987~~ *September 30, 2004*, delivery date requirement, with respect to bona fide real estate construction contracts which contain a specific and stated date of completion, the date of delivery of such tangible personal property shall be on or before the completion date of the applicable project.

C. Applications for refunds pursuant to this section shall be made in accordance with the provisions

of § 58.1-1823. Interest computed in accordance with § 58.1-1833 shall be added to the tax refunded pursuant to this section.

§ 58.1-801. Deeds generally; charter amendments.

A. On every deed admitted to record, except a deed exempt from taxation by law, there is hereby levied a state recordation tax. The rate of the tax shall be ~~fifteen~~ *30* cents on every $100 or fraction thereof of the consideration of the deed or the actual value of the property conveyed, whichever is greater.

Upon deeds conveying property lying partly within the Commonwealth and partly without the Commonwealth, the tax herein imposed shall apply only to the value of so much of the property conveyed as is situated within the Commonwealth.

B. When the charter of a corporation is amended, and the only effect of such amendment is to change the corporate name of such corporation, the tax upon the recordation of a deed conveying to, or vesting in, such corporation under its changed name, the title to any or all of the real or personal property of such corporation held in its name as it existed immediately prior to such amendment, shall be fifty cents.

§ 58.1-803. Deeds of trust or mortgages; maximum tax.

A. A recordation tax on deeds of trust or mortgages is hereby imposed at a rate of ~~15¢~~ *30 cents* on every $100 or portion thereof of the amount of bonds or other obligations secured thereby. In the event of an open or revolving deed of trust, the amount of the obligation for purposes of this section shall be the maximum amount which may be outstanding at any one time. In any case in which the amount which may be secured under a deed of trust or mortgage is not ascertainable, the tax shall be based upon the fair market value of the property conveyed, determined as of the date of the deed of trust or mortgage. The fair market value of the property shall include the value of any realty required by the terms of the deed of trust or mortgage to be constructed thereon.

B. On deeds of trust or mortgages upon the works and property of a railroad lying partly within the Commonwealth and partly without the Commonwealth, the tax shall be only upon such proportion of the amount of bonds, or other obligations secured thereby, as the number of miles of the line of such company in the Commonwealth bears to the whole number of miles of the line of such company conveyed by such deed of trust or mortgage.

Upon deeds of trust or mortgages conveying other property lying partly within the Commonwealth and partly without the Commonwealth the tax herein imposed shall be only upon such proportion of the debt secured as the value of the property located within the Commonwealth, or which may be brought into the Commonwealth, bears to the entire amount of property conveyed by such deed of trust or mortgage.

C. On deeds of trust or mortgages, which provide for an initial issue of bonds, to be followed thereafter by additional bonds, unlimited in amount, if such deed of trust or mortgage provides that as and when such additional bonds are issued a supplemental indenture shall be recorded in the office in which the original deed of trust or mortgage is first recorded, which supplement shall contain a statement as to the amount of the additional bonds to be issued, then the tax shall be paid upon the initial amount of bonds when the original deed of trust is recorded and thereafter on each additional amount of bonds when the supplemental indenture relating to such additional bonds is recorded.

On deeds of trust or mortgages which are supplemental to or wrap around existing deeds of trust on which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the face amount of the bond or obligation secured thereby which is in addition to the amount of the existing debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the amount of the existing debt.

D. On deeds of trust or mortgages, the purpose of which is to refinance or modify the terms of an existing debt with the same lender, which debt is secured by a deed of trust or mortgage on which the tax imposed hereunder has been paid, the tax shall be paid only on that portion of the amount of the bond or other obligation secured thereby which is in addition to the amount of the original debt secured by a deed of trust or mortgage on which the tax has been paid. The instrument shall certify the amount of original debt.

E. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture supplemental thereto shall be determined in accordance with the following schedule:

On the first 10 million dollars of value as determined pursuant to this section, ~~15¢~~ *30 cents* upon every $100 or portion thereof;

On the next 10 million dollars of value as determined pursuant to this section, ~~12¢~~ *27 cents* upon every $100 or portion thereof;

On the next 10 million dollars of value as determined pursuant to this section, ~~9¢~~ *24 cents* upon every $100 or portion thereof;

On the next 10 million dollars of value as determined pursuant to this section, ~~6¢~~ *21 cents* upon

every $100 or portion thereof; and

On all over 40 million dollars of value as determined pursuant to this section, ~~3¢~~ *18 cents* upon every $100 or portion thereof, incorporated into this section.

§ 58.1-807. Contracts generally; leases.

A. Except as hereinafter provided, on every contract or memorandum thereof relating to real or personal property admitted to record, a recordation tax is hereby levied at the rate of ~~fifteen~~ *30* cents on every $100 or fraction thereof of the consideration or value contracted for.

B. The recordation of a deed of lease for a term of years, or assignment of the lessee's interest therein, or memorandum thereof, shall be taxed according to the provisions of this section, unless provided otherwise in § 58.1-809 or unless the annual rental, multiplied by the term for which the lease runs, or remainder thereof, equals or exceeds the actual value of the property leased. In such cases the tax for recording the deed of lease shall be based upon the actual value of the property at the date of lease, including the value of any realty required by the terms of the lease to be constructed thereon by the lessor.

C. The recordation of an assignment of the lessor's interest in a lease, or memorandum thereof, shall be taxed according to the provisions of this section, unless the assignment of the lessor's interest in the lease is to provide additional security for an obligation of the lessor on which the tax has been previously paid, or the assignment of the lessor's interest is made to the person who owns the property which is subject to the lease. In such cases there shall be no tax for recording the lessor's assignment of the lease.

D. Notwithstanding the other provisions of this section, the tax on the recordation of leases of oil and gas rights shall not exceed ~~twenty-five dollars~~*$25*. The tax on the recordation of leases of coal and other mineral rights shall not exceed ~~fifty dollars~~*$50*.

E. Notwithstanding the other provisions of this section, the tax on the recordation of leases of outdoor advertising signs owned by a person engaged in the business of outdoor advertising licensed by the Virginia Department of Transportation pursuant to § 33.1-361 shall not exceed ~~twenty-five dollars~~*$25*.

§ 58.1-808. Sales contracts for the sale of rolling stock or equipment.

On every contract or agreement admitted to record relating to the sale of rolling stock or equipment, whether the title is reserved in the vendor or not, with a railroad corporation or other corporation or with a person, firm or company, the tax shall be ~~15¢~~ *30 cents* on every $100 or fraction thereof of the amount contracted for in such contract or agreement. When such contract or agreement is with a railroad corporation lying partly within the Commonwealth and partly without the Commonwealth, the tax shall be upon such proportion of the amount contracted for as the number of miles of the line of such railroad corporation in the Commonwealth bears to the whole number of miles of line of such railroad corporation.

§ 58.1-815. U.S. Route 58 Corridor Development Fund.

There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the U.S. Route 58 Corridor Development Fund, consisting of the first $40 million of annual collections of the state recordation taxes imposed ~~by this chapter~~*at the tax rates in effect on January 1, 2004, pursuant to this chapter*; provided, however, this dedication shall not affect the local recordation taxes under §§ 58.1-802 B and 58.1-814. The Fund shall also include such other funds as may be appropriated by the General Assembly from time to time, and designated for this Fund and all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the General Fund, but shall remain in the Fund. Allocations from this Fund may be paid to any authority, locality or commission for the purposes specified in § 33.1-221.1:2.

§ 58.1-816. Distribution of recordation tax to cities and counties.

A. Effective October 1, 1993, twenty million dollars of the taxes imposed under §§ 58.1-801 through 58.1-809 *at the tax rates in effect on January 1, 2004,* which are actually paid into the state treasury, shall be distributed among the counties and cities of this Commonwealth in the manner provided in subsection B of this section. Effective July 1, 1994, such annual distribution shall increase to forty million dollars.

B. Subject to any transfers required under §§ 58.1-815.1 and 58.1-816.1, the share of the state taxes distributable under this section among the counties and cities shall be apportioned and distributed quarterly to each county or city by the Comptroller by multiplying the amount to be distributed by a fraction in which the numerator is the amount of the taxes imposed under §§ 58.1-801 through 58.1-809 and actually paid into the state treasury which are attributable to deeds and other instruments recorded in the county or city and the denominator is the amount of taxes imposed under §§ 58.1-801 through 58.1-809 actually paid into the state treasury. All distributions pursuant to this section shall be made on a quarterly basis within thirty days of the end of the quarter. Such quarterly distribution shall equal ten million dollars. Each clerk of the court shall certify to the Comptroller, within fifteen days after the end

of the quarter, all amounts collected under §§ 58.1-801 through 58.1-809 and actually paid into the state treasury which are attributable to deeds and other instruments recorded in such county or city.

C. All moneys distributed to counties and cities pursuant to this section shall be used for (i) transportation purposes, including, without limitation, construction, administration, operation, improvement, maintenance and financing of transportation facilities, or (ii) public education.

As used in this section, the term "transportation facilities" shall include all transportation-related facilities including, but not limited to, all highway systems, public transportation or mass transit systems as defined in § 33.1-12, airports as defined in § 5.1-1, and port facilities as defined in § 62.1-140. Such term shall be liberally construed for purposes of this section.

D. If any revenues distributed to a county or city under subsection C of this section are applied or expended for any transportation facilities under the control and jurisdiction of any state agency, board, commission or authority, such transportation facilities shall be constructed, operated, administered, improved and maintained in accordance with laws, rules, regulations, policies and procedures governing such state agency, board, commission or authority; however, in the event these revenues, or a portion thereof, are expended for improving or constructing highways in a county which is subject to the provisions of § 33.1-75.3, such expenditures shall be undertaken in the manner prescribed in that statute.

E. In the case of any distribution to a county or city in which an office sharing agreement pursuant to §§ 15.2-1637 and 15.2-3822 is in effect, the Comptroller shall divide the distribution among the office sharing counties and cities. Each clerk of the court acting pursuant to an office sharing agreement shall certify to the Comptroller, within fifteen days after the end of the quarter, all amounts collected under §§ 58.1-801 through 58.1-809 and actually paid into the state treasury which are attributable to deeds and other instruments recorded on behalf of each county and city.

§ 58.1-901. Definitions.

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

"Decedent" means a deceased person.

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

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

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

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

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

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

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

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

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

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

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time.

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

A. *1.* ~~A~~ *For deaths occurring before January 1, 2004, a* tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B.

2. For deaths occurring on or after January 1, 2004, a tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident whose gross estate exceeds $10 million,

subject, where applicable, to the credit provided for in subsection B. However, no tax shall be imposed on a gross estate if the majority of the assets of the total estate are an interest in a closely held business or a working farm.

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

1. The amount of the death tax paid the other state and credited against the federal estate tax; or

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

C. Property of a resident includes:

1. Real property situated in the Commonwealth of Virginia;

2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and

3. Intangible personal property owned by the resident regardless of where it is located.

§ 58.1-2217. Taxes levied; rate.

A. There is hereby levied a tax at the rate of ~~seventeen and one-half~~ *twenty and one-half* cents per gallon on gasoline and gasohol.

B. There is hereby levied a tax at the rate of ~~sixteen~~ *twenty and one-half* cents per gallon on diesel fuel.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate of ~~seventeen and one-half~~ *twenty and one-half* cents per gallon, along with any penalties and interest that may accrue.

E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~sixteen~~ *twenty and one-half* cents per gallon, along with any penalties and interest that may accrue.

F. In accordance with § 62.1-44.34:13, a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

§ 58.1-2249. Tax on alternative fuel.

A. There is hereby levied a tax at the rate of ~~sixteen~~ *twenty and one-half* cents per gallon on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to ~~sixteen~~ *twenty and one-half* cents per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of ~~fifty dollars~~*$50* per vehicle on each highway vehicle that is fueled from a private source if the alternative fuels tax levied under this article has not been paid on fuel used in the vehicle. If such a highway vehicle is not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth for each complete month which shall have elapsed since the beginning of such year.

Article 8.1.

Additional Tax.

§ 58.1-2288.1. Additional tax on fuels.

A. 1. Any licensee or person required to precollect the tax imposed on fuels under § 58.1-2217 or § 58.1-2249 shall also be required to precollect an additional tax, which is hereby imposed at the rate established in subsection B, on the number of gallons of gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel for which the licensee or person is precollecting the tax under such section or sections.

2. An additional tax, at the rate established in subsection B, shall be imposed on any licensee or person subject to the tax under § 58.1-2224. Such additional tax shall be imposed on the number of

gallons of fuel for which the licensee or person is subject to the tax under such section.

B. The additional taxes imposed under subsection A shall be imposed at a cents per gallon rate determined by the Department. The taxes shall be based upon 5.5 percent of the statewide average retail price of a gallon of self-serve unleaded regular gasoline, excluding federal and state excise taxes, as determined and certified by the Department rounded up to the nearest one-tenth of one cent. Beginning July 1, 2004, such rate shall be determined every six months by the Department unless the Department certifies that the change in the statewide average retail price of a gallon of self-serve unleaded regular gasoline has been less than 10 percent during the six-month period. However, the rate shall be determined not less than annually.

C. The tax imposed under this section on gallons of fuel for which the licensee or person is precollecting the tax under § 58.1-2217 or § 58.1-2249 is imposed on the ultimate consumer but shall be precollected as prescribed herein, and the levies and assessments imposed on the licensee or person for such tax are imposed on them as agents of the Commonwealth for the precollection of the tax.

D. The taxes imposed under subsection A shall be due and paid by such licensee or person at the same time that the tax under §§ 58.1-2217, 58.1-2224, or § 58.1-2249, as applicable, is due. All provisions of this chapter including but not limited to return filing and reporting requirements, payment requirements and due dates for payment of tax, requirements to precollect tax, late payment penalties and interest, jeopardy assessments, civil penalties, discounts, deductions, and exemptions from tax shall apply mutatis mutandis to the taxes imposed under this section.

§ 58.1-2289. Disposition of tax revenue generally.

A. ~~Unless~~ *Except as* otherwise provided in *subsection F and elsewhere in* this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. Except as provided in *subsection F and* § 33.1-23.03:1, no portion of the revenue derived from taxes collected pursuant to §§ 58.1-2217, 58.1-2249 or § 58.1-2701, and remaining after authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.

Revenues collected under this chapter may be also used for (i) contributions toward the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law and (ii) expenditures for the operation and maintenance of the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, and the Department of Motor Vehicles as may be provided by law.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. ~~The~~ *Except as provided in subsection F, the* tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which the refund has been paid ~~at the rate of seventeen cents per gallon , or in the case of diesel fuel, fifteen and one-half cents per gallon,~~ *for gasoline, gasohol, diesel, blended fuel, and alternative fuel,* for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § 29.1-701, including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this

Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, *after deduction for the additional revenues generated from the increase in the rate of tax on gasoline and the additional tax on gasoline imposed by this chapter effective July 1, 2004, and* after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § 33.1-223, a sum as established by the General Assembly.

E. Notwithstanding other provisions of this section *except subsection F,* there shall be transferred from moneys collected pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less taxes collected for aviation fuels.

F. An amount equivalent to the net additional revenues generated by increases in the rate of taxes under this chapter and the additional taxes imposed pursuant to § 58.1-2288.1 effective July 1, 2004, pursuant to enactments of the 2004 Session of the General Assembly, shall be deposited by the Comptroller into the Transportation Trust Fund established under § 33.1-23.03:1. As provided in subsection A of § 58.1-638, of such amount deposited to the Transportation Trust Fund pursuant to this subsection, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund, and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

§ 58.1-2402. Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than (i) vehicles with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, or (ii) a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

There shall also be levied a tax upon the rental of a motor vehicle in Virginia, without regard to whether such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be levied upon a rental to a person for re-rental as an established business or part of an established business, or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price or gross proceeds:

1. ~~Three~~ *Four and one-half* percent of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such manufactured home sold in this Commonwealth; if such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in this Commonwealth.

2. ~~Three~~ *Four and one-half* percent of the sale price of each motor vehicle, or three percent of the sale price of each manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in this Commonwealth. When any such motor vehicle or manufactured home is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

3. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle, except those with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.

4. In addition to the tax levied pursuant to subdivision A 3, a tax of ~~four~~ *six* percent of the gross proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required to be licensed in the Commonwealth.

5. The minimum tax levied on the sale of any motor vehicle in the Commonwealth shall be ~~thirty-five dollars~~*$35,* except as provided by those exemptions defined in § 58.1-2403.

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision. A motor vehicle subject to the

tax imposed under subdivision A 3 shall be subject to the tax under either subdivision A 1 or A 2 when it ceases to be used for rental as an established business or part of an established business, or incidental or germane to such business.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no longer owned, rented or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof. Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of this Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to subdivision 10 of § 46.2-1530, shall be subject to the tax.

§ 58.1-2425. Disposition of revenues.

A. All funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § 46.2-100, shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; (ii) all funds ~~collected from the additional~~ *generated by a four percent* tax ~~imposed by subdivision A 4 of § 58.1-2402~~ on the rental of daily rental vehicles *pursuant to subdivision A 4 of § 58.1-2402* shall be distributed quarterly to the city, town, or county wherein such vehicle was delivered to the rentee; (iii) effective January 1, 1987, an amount equivalent to the net additional revenues generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, 58.1-2401, 58.1-2402 and this section shall be ~~distributed~~ *deposited* to and paid into the Transportation Trust Fund *established under § 33.1-23.03:1*, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; *(iv) an amount equivalent to the net additional revenues generated by increases in the rate of taxes under subdivisions A 1 and A 2 of § 58.1-2402 effective July 1, 2004, pursuant to enactments of the 2004 Session of the General Assembly, shall be deposited into the Transportation Trust Fund; (v) all funds generated by a two percent tax on the rental of daily rental vehicles pursuant to subdivision A 4 of § 58.1-2402 shall be deposited into the general fund of the state treasury;* and (~~iv~~*vi*) except as otherwise provided in clause (iii) of this sentence, all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 3 of § 58.1-2402 at the tax rate in effect on December 31, 1986, shall be paid by the Commissioner into the state treasury and shall be set aside in a special fund within the Commonwealth Transportation Fund to be used to meet the expenses of the Department of Motor Vehicles.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to ~~clause~~ *clauses* (iii) *and (iv)* of subsection A of this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

§ 58.1-2701. Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~nineteen~~ *three* and one-half cents per gallon *greater than the sum of the taxes imposed on each gallon of diesel fuel under subsection B of § 58.1-2217 and § 58.1-2288.1* calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~*60* degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles

that are not registered under the International Registration Plan shall pay a fee of ~~$100~~ *$150* per year for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ 46.2-685 et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

§ 58.1-2706. Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to ~~sixteen cents per gallon~~ *the sum of the taxes imposed on each gallon of diesel fuel under subsection B of § 58.1-2217 and § 58.1-2288.1* on all motor fuel, diesel fuel and liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

C. The Department may allow a refund upon receipt of proper application and review. It shall be at the discretion of the Department to determine whether an audit is required.

D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of not less than ~~ten~~*10* days to the applicant and the Attorney General.

E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Construction Fund.

F. Whenever a person operating under lease to a motor carrier to perform transport services on behalf of the carrier purchases motor fuel, diesel fuel or liquefied gases relating to such services, such payments or purchases may, at the discretion of the Department, be considered payment or purchases by the carrier.

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed ~~eight and one-half percent, when added to the state and local general sales and use tax,~~ *four percent* of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, any county with a population of at least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county

having a county manager plan of government are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

2. That of the net additional revenues generated by the increases in the taxes under §§ 58.1-801, 58.1-803, 58.1-807, and 58.1-808 of the Code of Virginia pursuant to the provisions of this act, an amount up to, but not exceeding, $80 million of such additional revenues generated in each of the Commonwealth's fiscal years beginning July 1, 2004, and July 1, 2005, shall be deposited by the Comptroller into the Revenue Stabilization Fund established under § 2.2-1828 of the Code of Virginia. Such deposits shall be made as soon as practicable by the Comptroller.

3. That the amendments to § 58.1-2402 of the Code of Virginia shall be applicable only to sales and rentals of motor vehicles occurring on or after July 1, 2004.

4. That the tenth enactment of Chapters 1019 and 1044 of the Acts of Assembly of the 2000 Session of the General Assembly is repealed.