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HOUSE BILL NO. 5018

Offered April 6, 2004

A BILL to amend and reenact §§ 58.1-302, 58.1-321, 58.1-322, 58.1-391, 58.1-392, 58.1-402, 58.1-441, 58.1-603, 58.1-604, 58.1-604.1, 58.1-605, 58.1-606, 58.1-609.3, 58.1-611.1, 58.1-614, 58.1-615, 58.1-627, 58.1-628, 58.1-639, 58.1-801, 58.1-803, 58.1-807, 58.1-808, 58.1-901, 58.1-1001, and 58.1-3833 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 58.1-390.1, 58.1-390.2, and 58.1-393.1, and by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395, and to repeal §§ 58.1-390 and 58.1-394 of the Code of Virginia, relating to revenues for appropriation throughout the Commonwealth and its localities as part of the Tax Reform Compromise Act of 2004.

Patron—Parrish

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-302, 58.1-321, 58.1-322, 58.1-391, 58.1-392, 58.1-402, 58.1-441, 58.1-603, 58.1-604, 58.1-604.1, 58.1-605, 58.1-606, 58.1-609.3, 58.1-611.1, 58.1-614, 58.1-615, 58.1-627, 58.1-628, 58.1-639, 58.1-801, 58.1-803, 58.1-807, 58.1-808, 58.1-901, 58.1-1001, and 58.1-3833 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 58.1-390.1, 58.1-390.2, and 58.1-393.1, and by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395 as follows:

§ 58.1-302. Definitions.

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

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

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

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

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

"Foreign source income" means:

1. Interest, other than interest derived from sources within the United States;
2. Dividends, other than dividends derived from sources within the United States;
3. Rents, royalties, license, and technical fees from property located or services performed without the United States or from any interest in such property, including rents, royalties, or fees for the use of or the privilege of using without the United States any patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties;
4. Gains, profits, or other income from the sale of intangible or real property located without the United States; and
5. The amount of an individual's share of net income attributable to a foreign source qualified business unit of an electing small business corporation (S corporation). For purposes of this subsection, qualified business unit shall be defined by § 989 of the Internal Revenue Code, and the source of such income shall be determined in accordance with §§ 861, 862 and 987 of the Internal Revenue Code.

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

"Income and deductions from Virginia sources" includes:

1. Items of income, gain, loss and deduction attributable to:
 - a. The ownership of any interest in real or tangible personal property in Virginia;
 - b. A business, trade, profession or occupation carried on in Virginia; or
 - c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or

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59 paid at a location in Virginia.

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

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

65 "*Intangible expenses and costs*" means:

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

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

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

73 4. *Licensing fees; and*

74 5. *Other similar expenses and costs.*

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

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

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

83 "*Related entity*" means:

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

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

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

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

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

108 "Resident estate or trust" means:

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

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

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

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

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

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

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

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

121 § 58.1-322 (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust)
 122 which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment
 123 shall not include the modification in subsection D of § 58.1-322, except that the amount of state income
 124 taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also
 125 include the modification in subsection D of § 58.1-322, regarding the deduction for the purchase of a
 126 prepaid tuition contract or contribution to a savings trust account.

127 § 58.1-321. Exemptions and exclusions.

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

129 1. A single individual where the Virginia adjusted gross income for such taxable year is less than
 130 \$3,000 for taxable years beginning before January 1, 1987; and less than \$5,000 for taxable years
 131 beginning on and after January 1, 1987, through December 31, 2004; and less than \$7,000 for taxable
 132 years beginning on and after January 1, 2005;

133 2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year
 134 is less than \$3,000 for taxable years beginning before January 1, 1987; and less than \$8,000 for taxable
 135 years beginning on and after January 1, 1987, through December 31, 2004; and less than \$14,000 for
 136 taxable years beginning on and after January 1, 2005 (or one-half of such amount in the case of a
 137 married individual filing a separate return).

138 For the purposes of this section "Virginia adjusted gross income" means federal adjusted gross
 139 income for the taxable years with the modifications specified in § 58.1-322 B, § 58.1-322 C and the
 140 additional deductions allowed under § 58.1-322 D 2 b and D 5.

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

144 § 58.1-322. Virginia taxable income of residents.

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

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

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

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

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

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

162 5. through 8. [Repealed.]

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

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

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

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

173 3. [Repealed.]

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

176 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
 177 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on
 178 the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of
 179 the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of
 180 subsection D of this section may not also claim a subtraction under this subdivision.

181 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as

182 defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a
183 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under
184 this subdivision.

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

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

189 7, 8. [Repealed.]

190 9. [Expired.]

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

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

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

203 13. [Repealed.]

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

206 15, 16. [Repealed.]

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

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

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

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

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

236 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
237 exchange of real property or the sale or exchange of an easement to real property which results in the
238 real property or the easement thereto being devoted to open-space use, as that term is defined in
239 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
240 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
241 shall be allowed for three years following the year in which the subtraction is taken.

242 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic
243 pay for military service personnel on extended active duty for periods in excess of 90 days; however,

244 the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military
 245 basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or
 246 exceeds \$30,000.

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

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

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

252 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
 253 result of (i) the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco
 254 Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant
 255 to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any
 256 person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
 257 Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or
 258 allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18
 259 of § 58.1-402.

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

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

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

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

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

289 30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
 290 2005, the indemnification payments received by contract poultry growers and table egg producers from
 291 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
 292 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
 293 poultry who contract with poultry growers qualify for this subtraction.

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

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

300 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
 301 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
 302 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
 303 on such federal return and increased by an amount which, when added to the amount deducted under
 304 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for

305 such purposes at a rate of 18 cents per mile; or

306 b. ~~Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987;~~
 307 ~~\$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for~~
 308 ~~married persons (one-half of such amounts in the case of a married individual filing a separate return);~~
 309 ~~and \$3,000~~ *Three thousand dollars for single individuals for taxable years beginning on and after January*
 310 *1, 1989; \$5,000 for married persons (one-half of such amounts in the case of a married individual filing*
 311 *a separate return) for taxable years beginning January 1, 1989, but before January 1, 2005; and \$6,000*
 312 *for married persons (one-half of such amounts in the case of a married individual filing a separate*
 313 *return) for taxable years beginning on and after January 1, 2005, provided that the taxpayer has not*
 314 *itemized deductions for the taxable year on his federal income tax return. For purposes of this section,*
 315 *any person who may be claimed as a dependent on another taxpayer's return for the taxable year may*
 316 *compute the deduction only with respect to earned income.*

317 2. a. ~~A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through~~
 318 ~~December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, through~~
 319 ~~December 31, 2004, and \$1,000 for taxable years beginning on and after January 1, 2005; for each~~
 320 ~~personal exemption allowable to the taxpayer for federal income tax purposes.~~

321 b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined
 322 under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption *in the*
 323 *amount of \$800.*

324 ~~b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December~~
 325 ~~31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The~~
 326 ~~additional deduction for blind or aged taxpayers allowed under this subdivision and the additional~~
 327 ~~personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be~~
 328 ~~allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income~~
 329 ~~tax purposes.~~

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

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

336 5. a. ~~Effective for all taxable years beginning on or after January 1, 1996, but before January 1,~~
 337 ~~2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age~~
 338 ~~62 through 64.~~

339 b. *For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000*
 340 *for individuals born on or before January 1, 1939.*

341 c. *For taxable years beginning January 1, 2004, but before January 1, 2005, a deduction in the*
 342 *amount of \$6,000 for individuals born on or between January 2, 1940, and January 1, 1942.*

343 d. *For taxable years beginning January 1, 2005, but before January 1, 2006, a deduction in the*
 344 *amount of \$6,000 for individuals born on or between January 2, 1941, and January 1, 1942.*

345 e. *For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000*
 346 *for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be*
 347 *reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000*
 348 *for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the*
 349 *deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross income*
 350 *of both spouses exceeds \$75,000.*

351 f. *For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal*
 352 *adjusted gross income minus any benefits received under Title II of the Social Security Act and other*
 353 *benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as*
 354 *amended.*

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

359 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
 360 during the taxable year for a prepaid tuition contract or savings trust account entered into with the
 361 Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as
 362 provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable
 363 year shall be limited to \$2,000 per prepaid tuition contract or savings trust account. No deduction shall
 364 be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or
 365 contributor's federal income tax return. If the purchase price or annual contribution to a savings trust
 366 account exceeds \$2,000, the remainder may be carried forward and subtracted in future taxable years

367 until the purchase price or savings trust contribution has been fully deducted; however, except as
 368 provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$2,000
 369 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained
 370 in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in
 371 which distributions or refunds are made for any reason other than (i) to pay qualified higher education
 372 expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or
 373 receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor"
 374 means the person shown as such on the records of the Virginia College Savings Plan as of December 31
 375 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust
 376 account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition
 377 contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

378 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
 379 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
 380 1998, and shall be subject to the limitations set out in subdivision 7 a.

381 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained
 382 age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$2,000 per
 383 prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a
 384 deduction for the full amount paid for the contract or contributed to a savings trust account, less any
 385 amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during
 386 taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take
 387 the deduction for the full amount paid during such years, less any amounts previously deducted with
 388 respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.

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

393 9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the
 394 tuition costs incurred by an individual employed as a primary or secondary school teacher licensed
 395 pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses
 396 that are required as a condition of employment; however, the deduction provided by this subsection shall
 397 be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has
 398 not claimed a deduction for the payment of such tuition costs on his federal income tax return.

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

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

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

407 § 58.1-390.1. *Definitions.*

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

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

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

417 § 58.1-390.2 *Taxation of pass-through entities.*

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

420 § 58.1-391. Virginia taxable income of partners.

421 A. In determining Virginia taxable income of a ~~partner~~ *an owner*, any modification described in
 422 § 58.1-322 ~~which~~ *that* relates to an item of ~~partnership~~ *pass-through entity* income, gain, loss or
 423 deduction shall be made in accordance with the ~~partner's~~ *owner's* distributive share, for federal income
 424 tax purposes, of the item to which the modification relates. Where a ~~partner's~~ *an owner's* distributive
 425 share of any such item is not included in any category of income, gain, loss or deduction required to be
 426 taken into account separately for federal income tax purposes, the ~~partner's~~ *owner's* distributive share of
 427 such item shall be determined in accordance with his distributive share, for federal income tax purposes,

428 of partnership *pass-through entity* taxable income or loss.

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

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

440 § 58.1-392. Reports by partnerships.

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

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

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

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

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

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

471 § 58.1-393.1. Extension of time for filing return by *pass-through entity*.

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

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

479 § 58.1-394.1. Failure of *pass-through entity* to make a return.

480 A. Any *pass-through entity* that fails to file a return required by this article within the time required
 481 shall be liable for a penalty of \$200 if the failure is for not more than one month, with an additional
 482 \$200 for each additional month or fraction thereof during which such failure to file continues, not
 483 exceeding six months in the aggregate. In no case, however, shall the penalty be less than \$200.

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

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

494 *§ 58.1-394.2. Fraudulent returns, etc., of pass-through entities; penalty.*

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

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

506 *§ 58.1-395. Nonresident owners.*

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

512 *§ 58.1-402. Virginia taxable income.*

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

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

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

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

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

528 *3. [Repealed.]*

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

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

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

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

537 *8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible*
 538 *expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or*
 539 *indirectly with one or more direct or indirect transactions with one or more related members to the*
 540 *extent such expenses and costs were deductible or deducted in computing federal taxable income for*
 541 *Virginia purposes. This addition shall not be required for any portion of the intangible expenses and*
 542 *costs if one of the following applies:*

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

546 *(2) The related member derives at least one-third of its gross revenues from the licensing of*
 547 *intangible property to parties who are not related members, and the transaction giving rise to the*
 548 *expenses and costs between the corporation and the related member was made at rates and terms*
 549 *comparable to the rates and terms of agreements that the related member has entered into with parties*
 550 *who are not related members for the licensing of intangible property.*

551 (3) *The corporation can establish to the satisfaction of the Tax Commissioner that the intangible*
552 *expenses and costs meet both of the following: (1) the related member during the same taxable year*
553 *directly or indirectly paid, accrued or incurred such portion to a person who is not a related member,*
554 *and (2) the transaction giving rise to the intangible expenses and costs between the corporation and the*
555 *related member did not have as a principal purpose the avoidance of any portion of the tax due under*
556 *this chapter.*

557 *b. Nothing in this subdivision shall be construed to limit or negate the Department's authority under*
558 *§ 58.1-446.*

559 *9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses*
560 *and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with*
561 *one or more direct or indirect transactions with one or more related members to the extent such*
562 *expenses and costs were deductible or deducted in computing federal taxable income for Virginia*
563 *purposes. This addition shall not be required for any portion of the interest expenses and costs, if:*

564 *(1) The related member has substantial business operations relating to interest-generating activities,*
565 *in which the related member pays expenses for at least five full-time employees who maintain, manage,*
566 *defend or are otherwise responsible for operations or administration relating to the interest-generating*
567 *activities;*

568 *(2) The interest expenses and costs are not directly or indirectly for, related to or in connection with*
569 *the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible*
570 *property,*

571 *(3) The transaction giving rise to the expenses and costs between the corporation and the related*
572 *member has a valid business purpose other than the avoidance or reduction of taxation and payments*
573 *between the parties are made at arm's length rates and terms; and*

574 *(4) One of the following applies:*

575 *(a) The corresponding item of income received by the related member is subject to a tax based on or*
576 *measured by net income or capital imposed by Virginia, another state, or a foreign government that has*
577 *entered into a comprehensive tax treaty with the United States government;*

578 *(b) Payments arise pursuant to a pre-existing contract entered into when the parties were not related*
579 *members provided the payments continue to be made at arm's length rates and terms;*

580 *(c) The related member engages in transactions with parties other than related members that*
581 *generate revenue in excess of two million dollars annually; or*

582 *(d) The transaction giving rise to the interest payments between the corporation and a related*
583 *member was done at arm's length rates and terms and meets any of the following:*

584 *(i) The related member uses funds that are borrowed from a party other than a related member or*
585 *that are paid, incurred or passed-through to a person who is not a related member;*

586 *(ii) The debt is part of a regular and systematic funds management or portfolio investment activity*
587 *conducted by the related member, whereby the funds of two or more related members are aggregated*
588 *for the purpose of achieving economies of scale, the internal financing of the active business operations*
589 *of members, or the benefit of centralized management of funds;*

590 *(iii) Financing the expansion of the business operations; or*

591 *(iii) Restructuring the debt of related members, or the pass-through of acquisition-related*
592 *indebtedness to related members.*

593 *b. Nothing in this subdivision shall be construed to limit or negate the Department's authority under*
594 *§ 58.1-446.*

595 *c. For the purposes of this subdivision:*

596 *"Arms length rates and terms" means that (i) two or more related members enter into a written*
597 *agreement for the transaction, (ii) such agreement is of a duration and contains payment terms*
598 *substantially similar to those that the related member would be able to obtain from an unrelated entity,*
599 *(iii) the interest is at or below the applicable federal rate compounded annually for debt instruments*
600 *under § 1274(d) of the Internal Revenue Code that was in effect at the time of the agreement and (iv)*
601 *the borrower or payor adheres to the payment terms of the agreement governing the transaction or any*
602 *amendments thereto.*

603 *"Valid business purpose" means one or more business purposes that alone or in combination*
604 *constitute the motivation for some business activity or transaction, which activity or transaction*
605 *improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.*

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

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

- 613 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
614 or of any political subdivision or instrumentality of this Commonwealth.
- 615 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the
616 Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding
617 year, or the last year in which such corporation has income, under the provisions of the income tax laws
618 of the Commonwealth.
- 619 4. The amount of any refund or credit for overpayment of income taxes imposed by this
620 Commonwealth or any other taxing jurisdiction.
- 621 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue
622 Code (foreign dividend gross-up).
- 623 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
624 deducted for federal purposes on account of the provisions of § 280C (a) of the Internal Revenue Code.
- 625 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F
626 income).
- 627 8. Any amount included therein which is foreign source income as defined in § 58.1-302.
- 628 9. [Repealed.]
- 629 10. The amount of any dividends received from corporations in which the taxpaying corporation
630 owns 50 percent or more of the voting stock.
- 631 11. [Repealed.]
- 632 12. [Expired.]
- 633 13. (Expires for taxable years beginning on and after January 1, 2004) The amount of any qualified
634 agricultural contribution as determined in § 58.1-322.2.
- 635 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research
636 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
637 deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code.
- 638 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
639 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
640 (§ 22.1-175.1 et seq.) of Title 22.1.
- 641 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
642 exchange of real property or the sale or exchange of an easement to real property which results in the
643 real property or the easement thereto being devoted to open-space use, as that term is defined in
644 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
645 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
646 shall be allowed for three years following the year in which the subtraction is taken.
- 647 17. For taxable years beginning on and after January 1, 2001, any amount included therein with
648 respect to § 58.1-440.1.
- 649 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
650 "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement
651 Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part
652 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b) any business
653 holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
654 Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota
655 allotment.
- 656 19. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
657 2005, the indemnification payments received by contract poultry growers and table egg producers from
658 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
659 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
660 poultry who contract with poultry growers qualify for this subtraction.
- 661 20. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the
662 Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7
663 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:
- 664 a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a)(2), then the
665 entire gain recognized may be subtracted.
- 666 b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a)(3), then 20
667 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in
668 each of the four succeeding taxable years.
- 669 D. Adjustments to federal taxable income shall be made to reflect the transitional modifications
670 provided in § 58.1-315.
- 671 § 58.1-441. Reports by corporations.
- 672 A. Every corporation organized under the laws of the Commonwealth, or having income from
673 Virginia sources, *other than a Subchapter S Corporation subject to the return filing requirements of*

674 § 58.1-392, shall make a report to the Department on or before the fifteenth day of the fourth month
675 following the close of its taxable year. Such reports shall be made on forms prescribed by the
676 Department and shall contain such information, including the gross receipts from any business carried on
677 in the Commonwealth and a depreciation schedule of property used in such trade or business, as may be
678 necessary for the proper enforcement of this chapter and be accompanied by a copy of any federal tax
679 return or report filed for such taxable year. The Department shall not require any nonprofit organization
680 created exclusively to assist a law-enforcement official or agency in apprehending and convicting
681 perpetrators of crimes, to report on such returns, or otherwise, the names of individuals or amounts paid
682 to such individuals by the organization for providing information about certain crimes.

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

689 B. Notwithstanding the provisions of subsection A, every organization to whom subdivision 5 of
690 § 58.1-401 applies, and having unrelated business taxable income or other taxable income, shall make a
691 report to the Department on or before the fifteenth day of the sixth month following the close of the
692 organization's taxable year.

693 § 58.1-603. Imposition of sales tax.

694 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now
695 imposed by law, a license or privilege tax upon every person who engages in the business of selling at
696 retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of
697 the things or services taxable under this chapter, or who stores for use or consumption in this
698 Commonwealth any item or article of tangible personal property as defined in this chapter, or who
699 leases or rents such property within this Commonwealth, in the amount of three and one-half percent
700 *through September 30, 2004, and four percent beginning on and after October 1, 2004:*

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

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

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

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

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

711 § 58.1-604. Imposition of use tax.

712 There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a
713 tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of
714 such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount
715 of three and one-half percent *through September 30, 2004, and four percent beginning on and after*
716 *October 1, 2004:*

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

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

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

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

735 5. The use tax shall not apply to out-of-state mail order catalog purchases totaling \$100 or less

736 during any calendar year.

737 § 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for
738 use in performing contracts.

739 In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of
740 § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools
741 or other equipment brought, imported or caused to be brought into this Commonwealth for use in
742 constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or
743 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant,
744 transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any
745 part thereof. The rate of tax is three and one-half percent *through September 30, 2004, and four percent*
746 *beginning on and after October 1, 2004*, on all tangible personal property except motor vehicles, which
747 shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two percent; and
748 watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.

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

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

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

766 § 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes;
767 collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

768 A. No county, city or town shall impose any local general sales or use tax or any local general retail
769 sales or use tax except as authorized by this section.

770 B. The council of any city and the governing body of any county may levy a general retail sales tax
771 at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall
772 be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to
773 all the provisions of this chapter and the rules and regulations published with respect thereto. The
774 applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local tax.
775 No discount under § 58.1-622 shall be allowed on a local sales tax. *Any accelerated payments of sales*
776 *and use tax revenues by dealers in accordance with the provisions of § 58.1-615 shall not affect the*
777 *distribution to localities of such revenues collected in accordance with this section.*

778 C. The council of any city and the governing body of any county desiring to impose a local sales tax
779 under this section may do so by the adoption of an ordinance stating its purpose and referring to this
780 section, and providing that such ordinance shall be effective on the first day of a month at least sixty
781 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner
782 so that it will be received within five days after its adoption.

783 D. Any local sales tax levied under this section shall be administered and collected by the Tax
784 Commissioner in the same manner and subject to the same penalties as provided for the state sales tax,
785 with the adjustments required by § 58.1-628.

786 E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid
787 into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books
788 under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the
789 account of each particular city or county levying a local sales tax under this section. The basis of such
790 credit shall be the city or county in which the sales were made as shown by the records of the
791 Department and certified by it monthly to the Comptroller, namely, the city or county of location of
792 each place of business of every dealer paying the tax to the Commonwealth without regard to the city or
793 county of possible use by the purchasers. If a dealer has any place of business located in more than one
794 political subdivision by reason of the boundary line or lines passing through such place of business, the
795 amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the
796 purposes of this section as follows: one-half shall be assignable to each political subdivision where two

797 are involved, one-third where three are involved, and one-fourth where four are involved.

798 F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in
799 any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia
800 in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax
801 moneys, and such payments shall be charged to the account of each such city or county under the
802 special fund created by this section. If errors are made in any such payment, or adjustments are
803 otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall
804 be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the
805 total adjustment shall be included in the payments for the next six months. In addition, the payment
806 shall include a refund of amounts erroneously not paid to the city or county and not previously refunded
807 during the three years preceding the discovery of the error. A correction and adjustment in payments
808 described in this subsection due to the misallocation of funds by the dealer shall be made within three
809 years of the date of the payment error.

810 G. Such payments to counties are subject to the qualification that in any county wherein is situated
811 any incorporated town constituting a special school district and operated as a separate school district
812 under a town school board of three members appointed by the town council, the county treasurer shall
813 pay into the town treasury for general governmental purposes the proper proportionate amount received
814 by him in the ratio that the school age population of such town bears to the school age population of
815 the entire county. If the school age population of any town constituting a separate school district is
816 increased by the annexation of territory since the last preceding school age population census, such
817 increase shall, for the purposes of this section, be added to the school age population of such town as
818 shown by the last such census and a proper reduction made in the school age population of the county
819 or counties from which the annexed territory was acquired.

820 H. One-half of such payments to counties are subject to the further qualification, other than as set
821 out in subsection G above, that in any county wherein is situated any incorporated town not constituting
822 a separate special school district which has complied with its charter provisions providing for the
823 election of its council and mayor for a period of at least four years immediately prior to the adoption of
824 the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for
825 general governmental purposes the proper proportionate amount received by him in the ratio that the
826 school age population of each such town bears to the school age population of the entire county, based
827 on the latest statewide school census. The preceding requirement pertaining to the time interval between
828 compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city.
829 If the school age population of any such town not constituting a separate special school district is
830 increased by the annexation of territory or otherwise since the last preceding school age population
831 census, such increase shall, for the purposes of this section, be added to the school age population of
832 such town as shown by the last such census and a proper reduction made in the school age population
833 of the county or counties from which the annexed territory was acquired.

834 I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its
835 discretion, appropriate funds to any incorporated town not constituting a separate school district within
836 such county which has not complied with the provisions of its charter relating to the elections of its
837 council and mayor, an amount not to exceed the amount it would have received from the tax imposed
838 by this chapter if such election had been held.

839 J. It is further provided that if any incorporated town which would otherwise be eligible to receive
840 funds from the county treasurer under subsection G or H of this section be located in a county which
841 does not levy a general retail sales tax under the provisions of this law, such town may levy a general
842 retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to
843 all the provisions of this section generally applicable to cities and counties. Any tax levied under the
844 authority of this subsection shall in no case continue to be levied on or after the effective date of a
845 county ordinance imposing a general retail sales tax in the county within which such town is located.

846 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;
847 collection thereof by Commonwealth and return of revenues to the cities and counties.

848 A. The council of any city and the governing body of any county which has levied or may hereafter
849 levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one
850 percent to provide revenue for the general fund of such city or county. Such tax shall be added to the
851 rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter,
852 and all amendments thereof, and the rules and regulations published with respect thereto, except that the
853 applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local tax,
854 and except that no discount under § 58.1-622 shall be allowed on a local use tax. *Any accelerated*
855 *payments of sales and use tax revenues by dealers in accordance with the provisions of § 58.1-615 shall*
856 *not affect the distribution to localities of such revenues collected in accordance with this section.*

857 B. The council of any city and the governing body of any county desiring to impose a local use tax
858 under this section may do so in the manner following:

859 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local
 860 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority
 861 of all the members thereof, by a recorded ye and nay vote, stating its purpose and referring to this
 862 section, and providing that the local use tax shall become effective on the first day of a month at least
 863 sixty days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to
 864 the Tax Commissioner so that it will be received within five days after its adoption. The resolution
 865 authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision
 866 of law, including any charter provision.

867 2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use
 868 tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections
 869 B and C of § 58.1-605.

870 C. Any local use tax levied under this section shall be administered and collected by the Tax
 871 Commissioner in the same manner and subject to the same penalties as provided for the state use tax,
 872 with the adjustments required by § 58.1-628.

873 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax
 874 applies, the situs of which for state and local sales tax purposes is the city or county of location of each
 875 place of business of every dealer paying the tax to the Commonwealth without regard to the city or
 876 county of possible use by the purchasers. However, the local use tax authorized by this section shall
 877 apply to tangible personal property purchased without this Commonwealth for use or consumption
 878 within the city or county imposing the local use tax, or stored within the city or county for use or
 879 consumption, where the property would have been subject to the sales tax if it had been purchased
 880 within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal
 881 property where the place of business of the lessor is without this Commonwealth and such leases or
 882 rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state
 883 use tax applies.

884 E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers
 885 for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly
 886 use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by
 887 cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is
 888 unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible
 889 personal property involved shall be remitted to the Commonwealth by such dealer without attempting to
 890 assign the shipment to any city or county.

891 F. Local use tax revenue shall be distributed among the cities and counties for which it is collected,
 892 respectively, as shown by the records of the Department, and the procedure shall be the same as that
 893 prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is
 894 not accurately assignable to a particular city or county shall be distributed monthly by the appropriate
 895 state authorities among the cities and counties in this Commonwealth imposing the local use tax upon
 896 the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax
 897 was in effect in the taxable month involved, as shown by the records of the Department, and computed
 898 with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
 899 among such cities and counties, respectively, in the month of distribution. Notwithstanding any other
 900 provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use
 901 tax. Any significant changes to the method of local use tax distribution shall be phased in over a
 902 five-year period. Distribution information shall be shared with the affected localities prior to
 903 implementation of the changes.

904 G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as
 905 provided in § 58.1-605 with respect to local sales tax revenue.

906 § 58.1-609.3. Commercial and industrial exemptions.

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

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

913 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of
 914 tangible personal property for resale where such industrial materials either enter into the production of or
 915 become a component part of the finished product; (ii) industrial materials that are coated upon or
 916 impregnated into the product at any stage of its being processed, manufactured, refined, or converted for
 917 resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or
 918 supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or
 919 resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging

920 tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to
921 produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or
922 for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or
923 replacements thereof, shall be exempt if the preponderance of their use is directly in processing,
924 manufacturing, refining, mining or converting products for sale or resale. The provisions of this
925 subsection do not apply to the drilling, extraction, refining, or processing of oil, gas, natural gas and
926 coalbed methane gas. *In addition, the exemption provided herein shall not be applicable to any*
927 *machinery, tools, and equipment, or any other tangible personal property used in the generation of*
928 *electric power, except for raw materials that are inputs to production of electricity.*

929 3. Tangible personal property sold or leased to (i) a public service corporation subject to a state
930 franchise or license tax upon gross receipts, (ii) a telecommunications company as defined in
931 § 58.1-400.1 or (iii) a telephone company chartered in the Commonwealth which is exclusively a local
932 mutual association and is not designated to accumulate profits for the benefit of, or to pay dividends to,
933 the stockholders or members thereof, for use or consumption by such corporation, company, person or
934 mutual association directly in the rendition of its public service; and tangible personal property sold or
935 leased to a public service corporation engaged in business as a common carrier of property or
936 passengers by motor vehicle or railway, for use or consumption by such common carrier directly in the
937 rendition of its public service.

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

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

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

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

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

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

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

966 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
967 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
968 photocopying of products for sale or resale.

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

980 13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or
981 distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or

982 space station of any kind possessing space flight capability, including the components thereof,
 983 irrespective of whether such facility, system, vehicle, satellite, or station is returned to this
 984 Commonwealth for subsequent use, storage or consumption in any manner when used to conduct
 985 spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal
 986 property placed on or used aboard any orbital or suborbital space facility, space propulsion system,
 987 space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal
 988 property is returned to this Commonwealth for subsequent use, storage or consumption in any manner
 989 when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary
 990 vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport
 991 activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment
 992 purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and
 993 services provided to operate and maintain launch facilities, launch equipment, payload processing
 994 facilities and payload processing equipment used to conduct spaceport activities.

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

997 The exemptions provided by this subdivision shall not be denied by reason of a failure,
 998 postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion
 999 system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or
 1000 any components thereof.

1001 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction
 1002 Program.

1003 A. Subject to the conditions of subsections D and E, the *The* tax imposed by §§ 58.1-603 and
 1004 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1005 1. From January 1, 2000, through ~~March 31, 2004~~ *September 30, 2004*, the tax rate on such food
 1006 shall be three percent of the gross sales price. The revenue from the tax shall be distributed as follows:
 1007 (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection
 1008 A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided
 1009 in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and
 1010 one-half percent shall be used for general fund purposes.

1011 2. From ~~April 1, 2004~~ *October 1, 2004*, through ~~March 31, 2002~~ *June 30, 2005*, the tax rate on such
 1012 food shall be two and one-half percent of the gross sales price. The revenue from the tax shall be
 1013 distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as
 1014 provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be
 1015 distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at
 1016 the rate of one percent shall be used for general fund purposes.

1017 3. ~~From April 1, 2002, through March 31, 2003~~ *Beginning July 1, 2005*, the tax rate on such food
 1018 shall be two percent of the gross sales price. The revenue from the tax shall be distributed as follows:
 1019 (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection
 1020 A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided
 1021 in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half
 1022 percent shall be used for general fund purposes.

1023 4. *Subject to the provisions of subsections D and E, On and on or after April 1, 2003* 2007, the tax
 1024 rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax
 1025 shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be
 1026 distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one
 1027 percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

1028 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
 1029 consumption pursuant to §§ 58.1-605 and 58.1-606.

1030 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
 1031 defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted
 1032 pursuant to that Act, except it shall not include seeds and plants which produce food for human
 1033 consumption. For the purpose of this section, "food purchased for human consumption" shall not include
 1034 food sold by any retail establishment where the gross receipts derived from the sale of food prepared by
 1035 such retail establishment for immediate consumption on or off the premises of the retail establishment
 1036 constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not
 1037 limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises
 1038 of that retail establishment. For purposes of this section, "retail establishment" means each place of
 1039 business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a
 1040 certificate of registration pursuant to § 58.1-613.

1041 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased
 1042 for human consumption for any 12-month period beginning on or after ~~April 1, 2004~~ *July 1, 2006*, shall

1043 not be reduced below the rate then in effect for the Commonwealth's current fiscal year if:

1044 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction
1045 is contemplated in subsection A do not exceed the official general fund revenue estimates for such
1046 preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act,
1047 by at least one percent; or

1048 2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have
1049 occurred during the then current fiscal year.

1050 E. If the tax rate on food purchased for human consumption remains the same for the period ~~January~~
1051 ~~4, 2000~~ July 1, 2006, through March 31, ~~2001~~2007, and the subsequent 12-month period beginning on
1052 April 1, ~~2001~~2007, or with respect to any consecutive 12-month periods beginning on and after April 1,
1053 ~~2001~~2007, the tax rate on such food shall remain the same unless none of the conditions described in
1054 subsection D have occurred, in which event the tax rate on food purchased for human consumption for
1055 the immediately following 12-month period shall be equal to the next lowest tax rate listed in subsection
1056 A.

1057 § 58.1-614. Vending machine sales.

1058 A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of
1059 tangible personal property through vending machines, or in any other manner making collection of the
1060 tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his
1061 wholesale purchases for sale at retail from vending machines and shall be required to remit an amount
1062 based on ~~four and one-half~~ five percent of such wholesale purchases.

1063 B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible
1064 personal property through vending machines shall report and remit the one percent local sales and use
1065 tax computed as provided in subsection A of this section.

1066 C. The provisions of subsections A and B of this section shall not be applicable to vending machine
1067 operators all of whose machines are under contract to nonprofit organizations. Such operators shall
1068 report only the gross receipts from machines selling items for more than ten cents and shall be required
1069 to remit an amount based on a percentage of their remaining gross sales established by the Tax
1070 Commissioner to take into account the inclusion of sales tax.

1071 D. Notwithstanding any other provisions in this section or § 58.1-628, when the Tax Commissioner
1072 determines that it is impractical to collect the tax in the manner provided by those sections, such dealer
1073 shall be required to remit an amount based on a percentage of gross receipts which takes into account
1074 the inclusion of the sales tax.

1075 E. The provisions of this section shall not be applicable to any dealer who fails to maintain records
1076 satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through
1077 vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each
1078 county or city in which he has machines.

1079 § 58.1-615. Returns by dealers.

1080 A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day
1081 of the month following the month in which the tax shall become effective, transmit to the Tax
1082 Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be,
1083 arising from all transactions taxable under this chapter during the preceding calendar month, and
1084 thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or
1085 before the twentieth day of each month, for the preceding calendar month. In the case of dealers
1086 regularly keeping books and accounts on the basis of an annual period which varies fifty-two to
1087 fifty-three weeks, the Tax Commissioner may make rules and regulations for reporting consistent with
1088 such accounting period.

1089 Notwithstanding any other provision of this chapter, a dealer may be required by the Tax
1090 Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when,
1091 in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would
1092 be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or
1093 before the twentieth day of the month following the close of the period. Each such return shall contain
1094 all information required for monthly returns.

1095 A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable
1096 to remit to the Tax Commissioner any tax for the period covered by the return.

1097 B. 1. In addition to the amounts required under the provisions of this section and § 58.1-616, any
1098 dealer as defined by § 58.1-612 or direct payment permit holder pursuant to § 58.1-624, with taxable
1099 sales and purchases of \$1,300,000 or greater for the twelve-month period beginning July 1, and ending
1100 June 30 of the immediately preceding calendar year, shall be required to make a payment equal to 90
1101 percent of the sales and use tax liability for the previous June. Such tax payments shall be made on or
1102 before the 30th day of June, if payment is made by electronic funds transfer, as defined in § 58.1-202.1.
1103 If payment is made by other than electronic funds transfer, such payment shall be made on or before the
1104 25th day of June. For purposes of this provision, taxable sales or purchases shall be computed without

1105 regard to the number of certificates of registration held by the dealer. Every dealer or direct payment
 1106 permit holder shall be entitled to a credit for the payment under this subsection on the return for June of
 1107 the current year due July 20. The provisions of this subsection shall not apply to persons who are
 1108 required to file only a Form ST-7, Consumer User Tax Return.

1109 2. In lieu of the penalties provided in § 58.1-635, except with respect to fraudulent returns, failure to
 1110 make a timely payment or full payment of the sales and use tax liability as provided in this subsection
 1111 shall subject the dealer or direct payment permit holder to a penalty of six percent of the amount of tax
 1112 underpayment that should have been properly paid to the Tax Commissioner. Interest will accrue as
 1113 provided in § 58.1-15. The payment required by this subsection shall become delinquent on the first day
 1114 following the due date set forth in this subsection if not paid.

1115 3. *This subsection shall be effective until June 1, 2005.*

1116 § 58.1-627. Bracket system for tax at rate of four percent.

1117 The ~~following~~ Tax Commissioner shall prepare brackets of prices that shall be used for the
 1118 collection of the tax imposed by this chapter: *on sales of less than five dollars.*

1119	_____	\$0.00	to	_____	\$0.14	no tax
1120	_____	.15	to	_____	.42	1» tax
1121	_____	.43	to	_____	.71	2» tax
1122	_____	.72	to	_____	.99	3» tax
1123	_____	1.00	to	_____	1.28	4» tax
1124	_____	1.29	to	_____	1.57	5» tax
1125	_____	1.58	to	_____	1.85	6» tax
1126	_____	1.86	to	_____	2.14	7» tax
1127	_____	2.15	to	_____	2.42	8» tax
1128	_____	2.43	to	_____	2.71	9» tax
1129	_____	2.72	to	_____	2.99	10» tax
1130	_____	3.00	to	_____	3.28	11» tax
1131	_____	3.29	to	_____	3.57	12» tax
1132	_____	3.58	to	_____	3.85	13» tax
1133	_____	3.86	to	_____	4.14	14» tax
1134	_____	4.15	to	_____	4.42	15» tax
1135	_____	4.43	to	_____	4.71	16» tax
1136	_____	4.72	to	_____	5.00	17» tax

1137

1138 On transactions ~~over five dollars~~ *greater than five dollars*, the tax shall be computed at ~~three and~~
 1139 ~~one-half~~ *four* percent, one-half cent or more being treated as one cent. If a dealer can show to the
 1140 satisfaction of the Tax Commissioner that more than ~~eighty-five~~ *85* percent of the total dollar volume of
 1141 his gross taxable sales during the taxable month was from individual sales at prices of ~~ten~~ *10* cents or
 1142 less each, and that he was unable to adjust his prices in such manner as to prevent the economic
 1143 incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax
 1144 liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at
 1145 prices of eleven cents or more.

1146 § 58.1-628. Bracket system for combined state and local tax.

1147 The ~~following~~ Tax Commissioner shall prepare brackets of prices that shall be used for the
 1148 collection of the combined state and local tax: *on sales of less than five dollars.*

1149	_____	\$0.00	to	_____	\$0.11	no tax
1150	_____	.12	to	_____	.33	1» tax
1151	_____	.34	to	_____	.55	2» tax
1152	_____	.56	to	_____	.77	3» tax
1153	_____	.78	to	_____	.99	4» tax
1154	_____	1.00	to	_____	1.22	5» tax
1155	_____	1.23	to	_____	1.44	6» tax
1156	_____	1.45	to	_____	1.66	7» tax
1157	_____	1.67	to	_____	1.88	8» tax
1158	_____	1.89	to	_____	2.11	9» tax
1159	_____	2.12	to	_____	2.33	10» tax
1160	_____	2.34	to	_____	2.55	11» tax
1161	_____	2.56	to	_____	2.77	12» tax
1162	_____	2.78	to	_____	2.99	13» tax

1163	3.00	to	3.22	14	tax
1164	3.23	to	3.44	15	tax
1165	3.45	to	3.66	16	tax
1166	3.67	to	3.88	17	tax
1167	3.89	to	4.11	18	tax
1168	4.12	to	4.33	19	tax
1169	4.34	to	4.55	20	tax
1170	4.56	to	4.77	21	tax
1171	4.78	to	5.00	22	tax

1172
 1173 On transactions ~~over five dollars greater than five dollars~~, the tax shall be computed at ~~four and~~
 1174 ~~one-half five~~ percent, one half cent or more being treated as one cent. The ~~foregoing~~ bracket system
 1175 shall not relieve the dealer from the duty and liability to remit an amount equal to ~~four and one-half five~~
 1176 percent of his gross taxable sales as provided in this chapter. If the dealer, however, can show to the
 1177 satisfaction of the Tax Commissioner that more than ~~eighty-five~~⁸⁵ percent of the total dollar volume of
 1178 his gross taxable sales during the taxable month was from individual sales at prices of ~~ten~~ 10 cents or
 1179 less each and that he was unable to adjust his prices in such manner as to prevent the economic
 1180 incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax
 1181 liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at
 1182 prices of ~~eleven~~ 11 cents or more.

1183 § 58.1-639. Transitional provisions.

1184 A. To the extent of any increase in the state sales and use tax rate enacted by the ~~1986~~ 2004 Special
 1185 Session of the Virginia General Assembly, the Tax Commissioner, upon application of the purchaser in
 1186 accordance with regulations promulgated by the Commissioner, shall have the authority to refund state
 1187 sales or use taxes paid on purchases of tangible personal property made pursuant to bona fide real estate
 1188 construction contracts, contracts for the sale of tangible personal property, and leases, provided that the
 1189 real estate construction contract, contract for the sale of tangible personal property or lease is entered
 1190 into prior to the date of enactment of the increase of the state sales and use tax rate; and further
 1191 provided that the date of delivery of the tangible personal property is on or before ~~March 30, 1987~~
 1192 *December 31, 2004*. The term "bona fide contract," when used in this section in relation to real estate
 1193 construction contracts, shall include but not be limited to those contracts which are entered into prior to
 1194 the enactment of the increase in the state sales and use tax rate, provided that such contracts include
 1195 plans and specifications.

1196 B. Notwithstanding the foregoing ~~March 30, 1987~~ *December 31, 2004*, delivery date requirement,
 1197 with respect to bona fide real estate construction contracts which contain a specific and stated date of
 1198 completion, the date of delivery of such tangible personal property shall be on or before the completion
 1199 date of the applicable project.

1200 C. Applications for refunds pursuant to this section shall be made in accordance with the provisions
 1201 of § 58.1-1823. Interest computed in accordance with § 58.1-1833 shall be added to the tax refunded
 1202 pursuant to this section.

1203 § 58.1-801. Deeds generally; charter amendments.

1204 A. On every deed admitted to record, except a deed exempt from taxation by law, there is hereby
 1205 levied a state recordation tax. The rate of the tax shall be ~~fifteen~~ 25 cents on every \$100 or fraction
 1206 thereof of the consideration of the deed or the actual value of the property conveyed, whichever is
 1207 greater.

1208 Upon deeds conveying property lying partly within the Commonwealth and partly without the
 1209 Commonwealth, the tax herein imposed shall apply only to the value of so much of the property
 1210 conveyed as is situated within the Commonwealth.

1211 B. When the charter of a corporation is amended, and the only effect of such amendment is to
 1212 change the corporate name of such corporation, the tax upon the recordation of a deed conveying to, or
 1213 vesting in, such corporation under its changed name, the title to any or all of the real or personal
 1214 property of such corporation held in its name as it existed immediately prior to such amendment, shall
 1215 be ~~fifty~~ 50 cents.

1216 § 58.1-803. Deeds of trust or mortgages; maximum tax.

1217 A. A recordation tax on deeds of trust or mortgages is hereby imposed at a rate of ~~15~~ 25¢ on every
 1218 \$100 or portion thereof of the amount of bonds or other obligations secured thereby. In the event of an
 1219 open or revolving deed of trust, the amount of the obligation for purposes of this section shall be the
 1220 maximum amount which may be outstanding at any one time. In any case in which the amount which
 1221 may be secured under a deed of trust or mortgage is not ascertainable, the tax shall be based upon the
 1222 fair market value of the property conveyed, determined as of the date of the deed of trust or mortgage.
 1223 The fair market value of the property shall include the value of any realty required by the terms of the

1224 deed of trust or mortgage to be constructed thereon.

1225 B. On deeds of trust or mortgages upon the works and property of a railroad lying partly within the
1226 Commonwealth and partly without the Commonwealth, the tax shall be only upon such proportion of
1227 the amount of bonds, or other obligations secured thereby, as the number of miles of the line of such
1228 company in the Commonwealth bears to the whole number of miles of the line of such company
1229 conveyed by such deed of trust or mortgage.

1230 Upon deeds of trust or mortgages conveying other property lying partly within the Commonwealth
1231 and partly without the Commonwealth the tax herein imposed shall be only upon such proportion of the
1232 debt secured as the value of the property located within the Commonwealth, or which may be brought
1233 into the Commonwealth, bears to the entire amount of property conveyed by such deed of trust or
1234 mortgage.

1235 C. On deeds of trust or mortgages, which provide for an initial issue of bonds, to be followed
1236 thereafter by additional bonds, unlimited in amount, if such deed of trust or mortgage provides that as
1237 and when such additional bonds are issued a supplemental indenture shall be recorded in the office in
1238 which the original deed of trust or mortgage is first recorded, which supplement shall contain a
1239 statement as to the amount of the additional bonds to be issued, then the tax shall be paid upon the
1240 initial amount of bonds when the original deed of trust is recorded and thereafter on each additional
1241 amount of bonds when the supplemental indenture relating to such additional bonds is recorded.

1242 On deeds of trust or mortgages which are supplemental to or wrap around existing deeds of trust on
1243 which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the
1244 face amount of the bond or obligation secured thereby which is in addition to the amount of the existing
1245 debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the
1246 amount of the existing debt.

1247 D. On deeds of trust or mortgages, the purpose of which is to refinance or modify the terms of an
1248 existing debt with the same lender, which debt is secured by a deed of trust or mortgage on which the
1249 tax imposed hereunder has been paid, the tax shall be paid only on that portion of the amount of the
1250 bond or other obligation secured thereby which is in addition to the amount of the original debt secured
1251 by a deed of trust or mortgage on which the tax has been paid. The instrument shall certify the amount
1252 of original debt.

1253 E. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture
1254 supplemental thereto shall be determined in accordance with the following schedule:

1255 On the first 10 million dollars of value as determined pursuant to this section, ~~45~~ 25¢ upon every
1256 \$100 or portion thereof;

1257 On the next 10 million dollars of value as determined pursuant to this section, ~~42~~ 22¢ upon every
1258 \$100 or portion thereof;

1259 On the next 10 million dollars of value as determined pursuant to this section, ~~9~~ 19¢ upon every
1260 \$100 or portion thereof;

1261 On the next 10 million dollars of value as determined pursuant to this section, ~~6~~ 16¢ upon every
1262 \$100 or portion thereof; and

1263 On all over 40 million dollars of value as determined pursuant to this section, ~~3~~ 13¢ upon every
1264 \$100 or portion thereof, incorporated into this section.

1265 § 58.1-807. Contracts generally; leases.

1266 A. Except as hereinafter provided, on every contract or memorandum thereof relating to real or
1267 personal property admitted to record, a recordation tax is hereby levied at the rate of ~~fifteen~~ 25 cents on
1268 every \$100 or fraction thereof of the consideration or value contracted for.

1269 B. The recordation of a deed of lease for a term of years, or assignment of the lessee's interest
1270 therein, or memorandum thereof, shall be taxed according to the provisions of this section, unless
1271 provided otherwise in § 58.1-809 or unless the annual rental, multiplied by the term for which the lease
1272 runs, or remainder thereof, equals or exceeds the actual value of the property leased. In such cases the
1273 tax for recording the deed of lease shall be based upon the actual value of the property at the date of
1274 lease, including the value of any realty required by the terms of the lease to be constructed thereon by
1275 the lessor.

1276 C. The recordation of an assignment of the lessor's interest in a lease, or memorandum thereof, shall
1277 be taxed according to the provisions of this section, unless the assignment of the lessor's interest in the
1278 lease is to provide additional security for an obligation of the lessor on which the tax has been
1279 previously paid, or the assignment of the lessor's interest is made to the person who owns the property
1280 which is subject to the lease. In such cases there shall be no tax for recording the lessor's assignment of
1281 the lease.

1282 D. Notwithstanding the other provisions of this section, the tax on the recordation of leases of oil
1283 and gas rights shall not exceed ~~twenty-five dollars~~ \$25. The tax on the recordation of leases of coal and
1284 other mineral rights shall not exceed ~~fifty dollars~~ \$50.

1285 E. Notwithstanding the other provisions of this section, the tax on the recordation of leases of
 1286 outdoor advertising signs owned by a person engaged in the business of outdoor advertising licensed by
 1287 the Virginia Department of Transportation pursuant to § 33.1-361 shall not exceed ~~twenty-five dollars~~
 1288 \$25.

1289 § 58.1-808. Sales contracts for the sale of rolling stock or equipment.

1290 On every contract or agreement admitted to record relating to the sale of rolling stock or equipment,
 1291 whether the title is reserved in the vendor or not, with a railroad corporation or other corporation or
 1292 with a person, firm or company, the tax shall be ~~15~~ 25¢ on every \$100 or fraction thereof of the amount
 1293 contracted for in such contract or agreement. When such contract or agreement is with a railroad
 1294 corporation lying partly within the Commonwealth and partly without the Commonwealth, the tax shall
 1295 be upon such proportion of the amount contracted for as the number of miles of the line of such
 1296 railroad corporation in the Commonwealth bears to the whole number of miles of line of such railroad
 1297 corporation.

1298 § 58.1-901. Definitions.

1299 As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

1300 "Decedent" means a deceased person.

1301 "Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011
 1302 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision,
 1303 in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full
 1304 advantage of such credit as the laws of the United States may allow. ~~In no event, however, shall such~~
 1305 ~~amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on~~
 1306 ~~January 1, 1978. In the case of a decedent dying on or after November 1, 2004, and before January 1,~~
 1307 ~~2005, the federal credit shall be deemed to be zero for purposes of the Virginia estate tax.~~

1308 "Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code
 1309 of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

1310 "Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his
 1311 death.

1312 "Personal representative" means the personal representative of the estate of the decedent, appointed,
 1313 qualified and acting within the Commonwealth, or, if there is no personal representative appointed,
 1314 qualified and acting within the Commonwealth, then any person in actual or constructive possession of
 1315 the Virginia gross estate of the decedent.

1316 "Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

1317 "State" means any state, territory or possession of the United States and the District of Columbia.

1318 "Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue
 1319 Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

1320 "Value" means "value" as finally determined for federal estate tax purposes under the laws of the
 1321 United States relating to federal estate taxes.

1322 Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes
 1323 means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other
 1324 provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be
 1325 or become effective at any time or from time to time.

1326 § 58.1-1001. Tax levied; rate; transitional provisions; bonds and letters of credit.

1327 A. In addition to all other taxes now imposed by law, every person within this Commonwealth who
 1328 sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of
 1329 distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of
 1330 ~~one and one-quarter mills~~ 1.25 cents on each such cigarette *through June 30, 2005. On and after July 1,*
 1331 *2005, the rate of such tax shall be 1.5 cents per cigarette.*

1332 B. *The Tax Commissioner shall establish guidelines and rules for the transitional procedures*
 1333 *regarding the imposition of the increased cigarette tax rate under this section. The guidelines and rules*
 1334 *issued by the Tax Commissioner regarding the imposition of the increased cigarette tax rate shall be*
 1335 *exempt from the Administrative Process Act (§2.2-4000 et seq.).*

1336 C. *The Tax Commissioner, in his sole discretion, may accept (i) a bond with a corporate surety or*
 1337 *(ii) an irrevocable letter of credit from any person holding a current permit issued pursuant to*
 1338 *§ 58.1-1011 and provide to that person Virginia revenue stamps without concurrent payment of the tax*
 1339 *imposed under this chapter. The Tax Commissioner shall establish guidelines and rules for such bonds*
 1340 *and letters of credit. Such guidelines and rules shall be exempt from the Administrative Process Act*
 1341 *(§ 2.2-4000 et seq.). The Tax Commissioner, in his sole discretion, may require any person to pay the*
 1342 *tax imposed under this chapter concurrent with obtaining revenue stamps from the Department,*
 1343 *regardless of whether or not such person has filed or agreed to file a bond or letter of credit.*

1344 § 58.1-3833. County food and beverage tax.

1345 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human
 1346 consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed ~~eight~~

1347 and ~~one-half percent~~, when added to the state and local general sales and use tax, *four percent* of the
 1348 amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold
 1349 through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as
 1350 well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and
 1351 convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall
 1352 be subject to the tax, for that portion of the grocery store or convenience store selling such items.

1353 This tax shall be levied only if the tax is approved in a referendum within the county which shall be
 1354 held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on
 1355 the filing of a petition signed by a number of registered voters of the county equal in number to 10
 1356 percent of the number of voters registered in the county, as appropriate on January 1 of the year in
 1357 which the petition is filed with the court of such county. The clerk of the circuit court shall publish
 1358 notice of the election in a newspaper of general circulation in the county once a week for three
 1359 consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall
 1360 be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such
 1361 resolution of the board of supervisors or such petition states for what projects and/or purposes the
 1362 revenues collected from the tax are to be used, then the question on the ballot for the referendum shall
 1363 include language stating for what projects and/or purposes the revenues collected from the tax are to be
 1364 used.

1365 The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and
 1366 nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently
 1367 imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection
 1368 of such tax shall be in a manner prescribed by the governing body.

1369 B. Notwithstanding the provisions of subsection A of this section, any county with a population of at
 1370 least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more
 1371 than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county
 1372 having a county manager plan of government are hereby authorized to levy a tax on food and beverages
 1373 sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in
 1374 subsection A above and subject to the same exemptions, not to exceed four percent of the amount
 1375 charged for such food and beverages, provided that the governing body of the respective county holds a
 1376 public hearing before adopting a local food and beverage tax, and the governing body by unanimous
 1377 vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as
 1378 the governing body may by ordinance prescribe.

1379 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
 1380 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
 1381 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
 1382 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.
 1383 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
 1384 law shall constitute embezzlement pursuant to § 18.2-111.

1385 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
 1386 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

1387 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
 1388 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
 1389 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
 1390 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
 1391 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
 1392 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

- 1393 **1. That §§ 58.1-390 and 58.1-394 of the Code of Virginia are repealed.**
- 1394 **2. That the provisions of this act amending §§ 58.1-302, 58.1-391, 58.1-392, 58.1-402, and 58.1-441**
 1395 **of the Code of Virginia and adding §§ 58.1-390.1, 58.1-393.1, 58.1-394.1, 58.1-394.2 and 58.1-395 to**
 1396 **the Code of Virginia shall apply for taxable years beginning on and after January 1, 2004.**
- 1397 **3. That the provisions of this act amending § 58.1-901 of the Code of Virginia shall apply only to**
 1398 **the estates of those persons who die on or after November 1, 2004.**
- 1399 **4. That notwithstanding any provision of law to the contrary, any public utility that is subject to a**
 1400 **sales and use tax on tangible personal property purchased or leased for use or consumption by**
 1401 **such utility in the rendition of its service as a public utility is hereby authorized to recover from**
 1402 **each customer that customer's pro rata share of the public utility's actual expense therefor by**
 1403 **means of a sales and use tax surcharge to recover any sales and use tax expenditures that are**
 1404 **incurred as a result of the elimination of the public utility's exemption from taxation pursuant to**
 1405 **§ 58.1-609.3. In determining the amount of surcharge and in imposing the same, the public utility**
 1406 **is not required to initiate a rate case hearing. However, the amount of the surcharge shall be**
 1407 **verified by the State Corporation Commission in the year subsequent to the surcharge. If the State**

1408 Corporation Commission determines that the amount of the surcharge exceeded the actual sales
1409 and use tax incurred as a result of the amendments to § 58.1-609.3, a surcharge adjustment shall
1410 be applied in the following year to return the overcharge to customers.
1411 5. That the provisions of this act shall not become effective unless a general appropriaton act is
1412 enacted by the General Assembly for the 2004-2006 biennium.