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HOUSE BILL NO. 5018

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the by Delegate Parrish)

(Patron Prior to Engrossment—Delegate Parrish)

House Amendments in [] — April 13, 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.

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~~ 80 percent of the voting stock of the other or others or (ii) at least ~~eighty~~ 80 percent of the voting stock of two or more corporations is owned by the same interests.

["Arms length rates and terms" means that (i) two or more related members enter into a written agreement for the transaction, (ii) such agreement is of a duration and contains rates and payment terms substantially similar to those which the related member would be able to obtain from an unrelated entity, and (iii) the borrower or payor substantially adheres to the payment terms of the agreement governing the transaction or any amendments thereto. There is a presumption that an interest rate is an arm's length rate if it conforms to §§ 482 and 1274 of the Internal Revenue Code.]

"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.

["Economic substance," for purposes of subparagraph B(8)(a) of § 58.1-402, means that a related member was formed for a valid business purpose, has substantial business operations, and bears the full expenses for a sufficient number of employees to adequately maintain, manage, defend or otherwise be responsible for the day-to-day operations or administration relating to its intangible property. The existence of valid economic substance shall be determined by the Commissioner based upon the totality of the facts and circumstances, taking into consideration the following criteria and any other criteria that may be published by the Department in regulations promulgated pursuant to the Administrative Process Act.

1. The related member has substantial business operations, including active engagement in the management, maintenance, or defense of the related member's intangible property assets. Active engagement in such business operations includes the utilization of individuals experienced and engaged in such work, the maintenance of bank accounts and investments, leased or owned office space or other real property, and personal property. The related member must maintain books and records reflecting the substantial business operations.

2. To the extent that any business functions (accounting, tax, legal, etc.) are outsourced by the related member to a third-party or another related member, the taxpayer directly bears all such

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60 expenses. To the extent any business activities are outsourced to another related member, the pricing of
 61 such services must be determined based on an independent valuation or transfer pricing study conducted
 62 by a qualified independent third party.

63 3. The related member has established the rate of any license or similar fees charged for the use of
 64 its intangible property by other related members through a valuation or transfer pricing study conducted
 65 by a qualified independent third party and such valuation or transfer pricing study is periodically
 66 updated at appropriate intervals based on taxpayer's economic position, not exceeding four years. The
 67 Department may order appropriate reductions in the rate of license or other fees that will be
 68 permissible for the use of the related member's intangible property if the related member fails to
 69 maintain an appropriate and accurate study or if the Department establishes by reasonable evidence
 70 that the study incorrectly determines the value of the intangible property.

71 4. The related member licenses intangible property to independent third parties, or engages in
 72 significant licensing transactions with affiliates outside the United States, or both, that pay license fees
 73 determined through a transfer pricing study conducted by a qualified independent third party. To the
 74 extent that the related member engages in comparable licensing transactions with unrelated members or
 75 with related members outside the United States, the rate of the license fees charged to a related member
 76 within the United States shall be equivalent to the rate charged to the unrelated member or the related
 77 member located outside the United States, as the case may be.

78 5. The related member directly maintains an active program of pursuing potential infringements
 79 against its intangible property rights by related or unrelated members and bears the full expense of such
 80 infringement actions.

81 6. The related member bears the full expense of intellectual property counsel or other specialists to
 82 assist in the negotiation of license agreements and the pursuit of actions in the event of infringements of
 83 its intangible property by related or unrelated members.

84 7. The related member consistently adheres to a policy of utilizing or investing any revenues derived
 85 from its intangible property for the benefit of the stockholders of the related member, except as
 86 permitted in subdivisions 8 and 9 below, when the related member can demonstrate that a transfer of
 87 funds through a loan or dividend serves a specific and bona fide business purpose.

88 8. Revenues of the related member directly or indirectly for, related to or in connection with the use,
 89 maintenance, or management of intangible property are not subsequently loaned back to the same
 90 related member who incurred the intangible expenses and costs or to other related members that
 91 incurred similar intangible expenses and costs from the related member, except where the related
 92 member can demonstrate by clear and convincing evidence that a loan to another related member serves
 93 a specific and bona fide business purpose such as financing investments in tangible, real, or intangible
 94 property, financing the expansion of the business operations, the provision of needed working capital, or
 95 the restructuring of the debt of or the push-down of acquisition-related indebtedness to the other related
 96 member.

97 9. The related member does not issue a dividend to another related member that represents a
 98 distribution of revenue received by the related member from such other related member directly or
 99 indirectly for, related to or in connection with the use, maintenance, or management of intangible
 100 property in a transaction that would be subject to an addition to Virginia taxable income pursuant to
 101 subparagraph B(8)(a) of § 58.1-402 or subject to such addition in the absence of the safe harbors
 102 established in that same subparagraph, except where the related member can demonstrate by clear and
 103 convincing evidence that the issuance of the dividend serves a specific and bona fide business purpose
 104 such as financing investments in tangible, real, or intangible property, financing the expansion of the
 105 business operations, the provision of needed working capital, or the restructuring of the debt of or the
 106 push-down of acquisition-related indebtedness to the other related member.]

107 "Foreign source income" means:

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

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

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

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

122 "Income and deductions from Virginia sources" includes:

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

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

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

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

127 paid at a location in Virginia.

128 2. Income from intangible personal property, including annuities, dividends, interest, royalties and

129 gains from the disposition of intangible personal property to the extent that such income is from

130 property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

131 "Individual" means all natural persons whether married or unmarried and fiduciaries acting for

132 natural persons, but not fiduciaries acting for trusts or estates.

133 "*Intangible expenses and costs*" means:

134 1. *Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or*

135 *indirect acquisition, use, maintenance or management, ownership, sale, exchange, lease, transfer, or any*

136 *other disposition of intangible property to the extent such amounts are allowed as deductions or costs in*

137 *determining taxable income;*

138 [~~2. *Losses related to or incurred in connection directly or indirectly with factoring transactions or*~~

139 ~~*discounting transactions;*~~]

140 [3 2] . *Royalty, patent, technical and copyright fees;*

141 [4 3] . *Licensing fees; and*

142 [5 4] . *Other similar expenses and costs.*

143 ["*Subject to a tax based on or measured by net income or capital*" for purposes of subdivision B 8

144 *a of § 58.1-402 includes, but is not limited to, situations in which a related member is required to file*

145 *on a separate basis or is included in a combined or consolidated return in the jurisdiction in which the*

146 *principal office of the related member is located. As used in this paragraph, the term "tax based on or*

147 *measured by net income or capital" shall be inclusive of taxes that are imposed as the primary*

148 *methodology by which a state taxes business entities, such as the Michigan Single Business Tax, the*

149 *Washington Business and Occupation Tax, taxes on insurance premiums imposed by Virginia and other*

150 *states, and the Virginia Bank Franchise Tax.]*

151 "*Intangible property*" means *patents, patent applications, trade names, trademarks, service marks,*

152 *copyrights and similar types of intangible assets.*

153 "*Interest expenses and costs*" means *amounts directly or indirectly allowed as deductions under*

154 *§ 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal*

155 *Revenue Code to the extent such expenses and costs are directly or indirectly for, related to, or in*

156 *connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale,*

157 *exchange, lease, transfer, or disposition of intangible property.*

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

159 "*Related entity*" means:

160 1. *A stockholder who is an individual, or a member of the stockholder's family enumerated in § 318*

161 *of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own,*

162 *directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of*

163 *the taxpayer's outstanding stock;*

164 2. *A stockholder, or a stockholder's partnership, limited liability company, estate, trust or*

165 *corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates,*

166 *trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least*

167 *50 percent of the value of the taxpayer's outstanding stock; or*

168 3. *A corporation, or a party related to the corporation in a manner that would require an attribution*

169 *of stock from the corporation to the party or from the party to the corporation under the attribution*

170 *rules of § 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or*

171 *constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution*

172 *rules of § 318 of the Internal Revenue Code shall apply for purposes of determining whether the*

173 *ownership requirements of this subdivision have been met.*

174 "*Related member*" means *a person that, with respect to the taxpayer during all or any portion of the*

175 *taxable year, is a related entity, a component member as defined in § 1563(b) of the Internal Revenue*

176 *Code, or is a person to or from whom there is attribution of stock ownership in accordance with*

177 *§ 1563(e) of the Internal Revenue Code.*

178 "Resident" applies only to natural persons and includes, for the purpose of determining liability for

179 the taxes imposed by this chapter upon the income of any taxable year every person domiciled in

180 Virginia at any time during the taxable year and every other person who, for an aggregate of more than

181 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in

182 Virginia or not. The word "resident" shall not include any member of the United States Congress who is

183 domiciled in another state.

184 "Resident estate or trust" means:

- 185 1. The estate of a decedent who at his death was domiciled in the Commonwealth;
- 186 2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;
- 187 3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or
- 188 4. A trust or estate which is being administered in the Commonwealth.

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

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

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

196 ["Valid business purpose" means one or more business purposes, which alone or in combination,
197 constitutes the motivation for some business activity or transaction, which activity or transaction
198 changes in a meaningful way, apart from tax effects, the economic position of the taxpayer.]

199 "Virginia fiduciary adjustment" means the net amount of the applicable modifications described in
200 § 58.1-322 (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust)
201 which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment
202 shall not include the modification in subsection D of § 58.1-322, except that the amount of state income
203 taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also
204 include the modification in subsection D of § 58.1-322, regarding the deduction for the purchase of a
205 prepaid tuition contract or contribution to a savings trust account.

206 § 58.1-321. Exemptions and exclusions.

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

208 1. A single individual where the Virginia adjusted gross income for such taxable year is less than
209 \$3,000 for taxable years beginning before January 1, 1987; and less than \$5,000 for taxable years
210 beginning on and after January 1, 1987, through December 31, 2004; and less than \$7,000 for taxable
211 years beginning on and after January 1, 2005;

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

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

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

223 § 58.1-322. Virginia taxable income of residents.

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

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

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

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

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

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

241 5. through 8. [Repealed.]

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

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

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

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

252 3. [Repealed.]

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

255 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
 256 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on
 257 the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of
 258 the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of
 259 subsection D of this section may not also claim a subtraction under this subdivision.

260 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as
 261 defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a
 262 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under
 263 this subdivision.

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

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

268 7, 8. [Repealed.]

269 9. [Expired.]

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

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

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

282 13. [Repealed.]

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

285 15, 16. [Repealed.]

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

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

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

305 20. For taxable years beginning on and after January 1, 1997, any income attributable to a

306 distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the
307 Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The
308 subtraction for any income attributable to a refund shall be limited to income attributable to a refund in
309 the event of a beneficiary's death, disability, or receipt of a scholarship.

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

315 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
316 exchange of real property or the sale or exchange of an easement to real property which results in the
317 real property or the easement thereto being devoted to open-space use, as that term is defined in
318 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
319 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
320 shall be allowed for three years following the year in which the subtraction is taken.

321 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic
322 pay for military service personnel on extended active duty for periods in excess of 90 days; however,
323 the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military
324 basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or
325 exceeds \$30,000.

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

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

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

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

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

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

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

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

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

368 30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
 369 2005, the indemnification payments received by contract poultry growers and table egg producers from
 370 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
 371 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
 372 poultry who contract with poultry growers qualify for this subtraction.

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

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

379 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
 380 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
 381 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
 382 on such federal return and increased by an amount which, when added to the amount deducted under
 383 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
 384 such purposes at a rate of 18 cents per mile; or

385 b. ~~Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987;~~
 386 ~~\$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for~~
 387 ~~married persons (one-half of such amounts in the case of a married individual filing a separate return);~~
 388 ~~and \$3,000~~ *Three thousand dollars* for single individuals for taxable years beginning on and after
 389 January 1, 1989; *\$5,000 for married persons (one-half of such amounts in the case of a married*
 390 *individual filing a separate return) for taxable years beginning January 1, 1989, but before January 1,*
 391 *2005; and \$6,000 for married persons (one-half of such amounts in the case of a married individual*
 392 *filing a separate return) for taxable years beginning on and after January 1, 2005, provided that the*
 393 *taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes*
 394 *of this section, any person who may be claimed as a dependent on another taxpayer's return for the*
 395 *taxable year may compute the deduction only with respect to earned income.*

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

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

403 ~~b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December~~
 404 ~~31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The~~
 405 ~~additional deduction for blind or aged taxpayers allowed under this subdivision and the additional~~
 406 ~~personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be~~
 407 ~~allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income~~
 408 ~~tax purposes.~~

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

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

415 5. a. Effective for all taxable years beginning ~~on or after~~ January 1, 1996, *but before January 1,*
 416 *2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age*
 417 *62 through 64.*

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

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

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

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

429 of both spouses exceeds \$75,000.

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

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

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

457 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
458 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
459 1998, and shall be subject to the limitations set out in subdivision 7 a.

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

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

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

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

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

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

486 § 58.1-390.1. Definitions.

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

489 "Pass-through entity" means any entity, including a limited partnership, a limited liability
490 partnership, a general partnership, a limited liability company, a professional limited liability company,

491 *a business trust or a Subchapter S Corporation, that is recognized as a separate entity for federal*
 492 *income tax purposes, in which the partners, members or shareholders report their share of the income,*
 493 *gains, losses, deductions and credits from the entity on their federal income tax returns.*

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

496 § 58.1-390.2 *Taxation of pass-through entities.*

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

499 § 58.1-391. *Virginia taxable income of partners.*

500 A. In determining Virginia taxable income of a ~~partner~~ *an owner*, any modification described in
 501 § 58.1-322 ~~which~~ *that* relates to an item of ~~partnership~~ *pass-through entity* income, gain, loss or
 502 deduction shall be made in accordance with the ~~partner's~~ *owner's* distributive share, for federal income
 503 tax purposes, of the item to which the modification relates. Where a ~~partner's~~ *an owner's* distributive
 504 share of any such item is not included in any category of income, gain, loss or deduction required to be
 505 taken into account separately for federal income tax purposes, the ~~partner's~~ *owner's* distributive share of
 506 such item shall be determined in accordance with his distributive share, for federal income tax purposes,
 507 of ~~partnership~~ *pass-through entity* taxable income or loss.

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

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

519 § 58.1-392. *Reports by partnerships.*

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

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

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

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

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

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

550 § 58.1-393.1. *Extension of time for filing return by pass-through entity.*

551 A. *Whenever any pass-through entity has been allowed or granted an extension of time within which*

552 to file any federal report of its income for any taxable year, the due date for the filing of the report or
553 return required by this article shall be extended to the date six months after such due date, or 30 days
554 after the extended date for filing the federal report, whichever is later.

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

558 § 58.1-394.1. Failure of pass-through entity to make a return.

559 A. Any pass-through entity that fails to file a return required by this article within the time required
560 shall be liable for a penalty of \$200 if the failure is for not more than one month, with an additional
561 \$200 for each additional month or fraction thereof during which such failure to file continues, not
562 exceeding six months in the aggregate. In no case, however, shall the penalty be less than \$200.

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

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

573 § 58.1-394.2. Fraudulent returns, etc., of pass-through entities; penalty.

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

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

585 § 58.1-395. Nonresident owners.

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

591 § 58.1-402. Virginia taxable income.

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

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

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

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

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

607 3. [Repealed.]

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

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

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

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

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

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

625 (2) *The related member derives at least [~~one-third~~ 20 percent] of its gross revenues from the*
626 *licensing of intangible property to parties who are not related members [or related members which*
627 *utilize the intangible property outside the United States] , and the transaction giving rise to the*
628 *expenses and costs between the corporation and the related member was made at rates and terms*
629 *comparable to the rates and terms of agreements that the related member has entered into with parties*
630 *who are not related members for the licensing of intangible property.*

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

637 *b. Nothing in this subdivision shall be construed to limit or negate the Department's authority under*
638 *§58.1-446.*

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

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

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

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

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

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

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

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

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

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

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

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

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

673 *b. Nothing in this subdivision shall be construed to limit or negate the Department's authority under*
674 *§58.1-446.*

675 e. For the purposes of this subdivision:

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

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

686 (3) The related member during the same taxable year directly or indirectly paid, received, accrued
687 or incurred such amount to or from a person or entity that is not a related member, and such
688 transaction with the related member was done for a valid business purpose and the payments are made
689 at arm's length rates and terms;

690 (4) The payments arise pursuant to a pre-existing contract entered into when the parties were not
691 related members provided the payments continue to be made at arm's length rates and terms;

692 (5) The taxpayer demonstrates by clear and convincing evidence that the transaction giving rise to
693 the intangible expenses and costs has a valid business purpose, possesses economic substance, and
694 reflects arm's length rates and terms comparable to a similar arm's-length transaction between unrelated
695 parties; or

696 (6) The transaction giving rise to the interest payments between the corporation and a related
697 member was at arm's length rates and terms and meets any of the following:

698 (a) The related member uses funds that are borrowed from a party other than a related member or
699 that are paid, incurred or passed through to a person that is not a related member;

700 (b) The debt is part of a regular and systematic funds management or portfolio investment activity
701 conducted by the related member, whereby the funds of two or more related members are aggregated
702 for the purpose of achieving economies of scale, the internal financing of the active business operations
703 of members, or the benefit of centralized management of funds;

704 (c) The funds are used for a bona fide business purpose such as investment in tangible, real, or
705 intangible property, financing the expansion of the business operations, or the provision of working
706 capital; or

707 (d) The funds are used to restructure the debt of related members, or to pass through
708 acquisition-related indebtedness to related members.

709 b. Nothing in this subdivision shall be construed to limit or negate the provisions of § 58.1-446.]

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

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

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

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

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

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

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

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

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

732 9. [Repealed.]

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

735 11. [Repealed.]

736 12. [Expired.]

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

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

742 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
743 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
744 (§ 22.1-175.1 et seq.) of Title 22.1.

745 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
746 exchange of real property or the sale or exchange of an easement to real property which results in the
747 real property or the easement thereto being devoted to open-space use, as that term is defined in
748 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
749 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
750 shall be allowed for three years following the year in which the subtraction is taken.

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

753 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
754 "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement
755 Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part
756 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b) any business
757 holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
758 Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota
759 allotment.

760 19. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
761 2005, the indemnification payments received by contract poultry growers and table egg producers from
762 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
763 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
764 poultry who contract with poultry growers qualify for this subtraction.

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

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

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

773 [21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses
774 and costs or interest expenses and costs added to the federal taxable income of a corporation in
775 accordance with the provisions of subdivision B 8 a of this section shall be subtracted from the federal
776 taxable income of the related member that received such amount if such related member is subject to
777 Virginia income tax on the same amount.]

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

780 § 58.1-441. Reports by corporations.

781 A. Every corporation organized under the laws of the Commonwealth, or having income from
782 Virginia sources, *other than a Subchapter S Corporation subject to the return filing requirements of*
783 *§ 58.1-392*, shall make a report to the Department on or before the fifteenth day of the fourth month
784 following the close of its taxable year. Such reports shall be made on forms prescribed by the
785 Department and shall contain such information, including the gross receipts from any business carried on
786 in the Commonwealth and a depreciation schedule of property used in such trade or business, as may be
787 necessary for the proper enforcement of this chapter and be accompanied by a copy of any federal tax
788 return or report filed for such taxable year. The Department shall not require any nonprofit organization
789 created exclusively to assist a law-enforcement official or agency in apprehending and convicting
790 perpetrators of crimes, to report on such returns, or otherwise, the names of individuals or amounts paid
791 to such individuals by the organization for providing information about certain crimes.

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

798 B. Notwithstanding the provisions of subsection A, every organization to whom subdivision 5 of
799 § 58.1-401 applies, and having unrelated business taxable income or other taxable income, shall make a
800 report to the Department on or before the fifteenth day of the sixth month following the close of the
801 organization's taxable year.

802 § 58.1-603. Imposition of sales tax.

803 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now
804 imposed by law, a license or privilege tax upon every person who engages in the business of selling at
805 retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of
806 the things or services taxable under this chapter, or who stores for use or consumption in this
807 Commonwealth any item or article of tangible personal property as defined in this chapter, or who
808 leases or rents such property within this Commonwealth, in the amount of three and one-half percent
809 *through August 31, 2004, and four percent beginning on and after September 1, 2004:*

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

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

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

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

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

820 § 58.1-604. Imposition of use tax.

821 There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a
822 tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of
823 such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount
824 of three and one-half percent *through August 31, 2004, and four percent beginning on and after*
825 *September 1, 2004:*

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

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

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

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

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

846 § 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for
847 use in performing contracts.

848 In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of
849 § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools
850 or other equipment brought, imported or caused to be brought into this Commonwealth for use in
851 constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or
852 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant,
853 transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any
854 part thereof. The rate of tax is three and one-half percent *through August 31, 2004, and four percent*
855 *beginning on and after September 1, 2004, on all tangible personal property except motor vehicles,*
856 *which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two*
857 *percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.*

858 For purposes of this section the words "motor vehicle" means any vehicle which is self-propelled and
859 designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained

860 from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways
 861 which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm
 862 tractor, road construction or maintenance machinery or equipment, special mobile equipment or any
 863 vehicle designed primarily for use in work off the highway.

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

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

875 § 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes;
 876 collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

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

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

887 C. The council of any city and the governing body of any county desiring to impose a local sales tax
 888 under this section may do so by the adoption of an ordinance stating its purpose and referring to this
 889 section, and providing that such ordinance shall be effective on the first day of a month at least ~~sixty~~ 60
 890 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner
 891 so that it will be received within five days after its adoption.

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

895 E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid
 896 into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books
 897 under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the
 898 account of each particular city or county levying a local sales tax under this section. The basis of such
 899 credit shall be the city or county in which the sales were made as shown by the records of the
 900 Department and certified by it monthly to the Comptroller, namely, the city or county of location of
 901 each place of business of every dealer paying the tax to the Commonwealth without regard to the city or
 902 county of possible use by the purchasers. If a dealer has any place of business located in more than one
 903 political subdivision by reason of the boundary line or lines passing through such place of business, the
 904 amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the
 905 purposes of this section as follows: one-half shall be assignable to each political subdivision where two
 906 are involved, one-third where three are involved, and one-fourth where four are involved.

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

919 G. Such payments to counties are subject to the qualification that in any county wherein is situated
 920 any incorporated town constituting a special school district and operated as a separate school district

921 under a town school board of three members appointed by the town council, the county treasurer shall
922 pay into the town treasury for general governmental purposes the proper proportionate amount received
923 by him in the ratio that the school age population of such town bears to the school age population of
924 the entire county. If the school age population of any town constituting a separate school district is
925 increased by the annexation of territory since the last preceding school age population census, such
926 increase shall, for the purposes of this section, be added to the school age population of such town as
927 shown by the last such census and a proper reduction made in the school age population of the county
928 or counties from which the annexed territory was acquired.

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

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

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

955 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;
956 collection thereof by Commonwealth and return of revenues to the cities and counties.

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

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

968 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local
969 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority
970 of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this
971 section, and providing that the local use tax shall become effective on the first day of a month at least
972 ~~sixty~~ 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded
973 to the Tax Commissioner so that it will be received within five days after its adoption. The resolution
974 authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision
975 of law, including any charter provision.

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

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

982 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax

983 applies, the situs of which for state and local sales tax purposes is the city or county of location of each
 984 place of business of every dealer paying the tax to the Commonwealth without regard to the city or
 985 county of possible use by the purchasers. However, the local use tax authorized by this section shall
 986 apply to tangible personal property purchased without this Commonwealth for use or consumption
 987 within the city or county imposing the local use tax, or stored within the city or county for use or
 988 consumption, where the property would have been subject to the sales tax if it had been purchased
 989 within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal
 990 property where the place of business of the lessor is without this Commonwealth and such leases or
 991 rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state
 992 use tax applies.

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

1000 F. Local use tax revenue shall be distributed among the cities and counties for which it is collected,
 1001 respectively, as shown by the records of the Department, and the procedure shall be the same as that
 1002 prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is
 1003 not accurately assignable to a particular city or county shall be distributed monthly by the appropriate
 1004 state authorities among the cities and counties in this Commonwealth imposing the local use tax upon
 1005 the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax
 1006 was in effect in the taxable month involved, as shown by the records of the Department, and computed
 1007 with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
 1008 among such cities and counties, respectively, in the month of distribution. Notwithstanding any other
 1009 provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use
 1010 tax. Any significant changes to the method of local use tax distribution shall be phased in over a
 1011 five-year period. Distribution information shall be shared with the affected localities prior to
 1012 implementation of the changes.

1013 G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as
 1014 provided in § 58.1-605 with respect to local sales tax revenue.

1015 § 58.1-609.3. Commercial and industrial exemptions.

1016 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606
 1017 shall not apply to the following:

1018 1. Personal property purchased by a contractor which is used solely in another state or in a foreign
 1019 country, which could be purchased by such contractor for such use free from sales tax in such other
 1020 state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or
 1021 country.

1022 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of
 1023 tangible personal property for resale where such industrial materials either enter into the production of or
 1024 become a component part of the finished product; (ii) industrial materials that are coated upon or
 1025 impregnated into the product at any stage of its being processed, manufactured, refined, or converted for
 1026 resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or
 1027 supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or
 1028 resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging
 1029 tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to
 1030 produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or
 1031 for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or
 1032 replacements thereof, shall be exempt if the preponderance of their use is directly in processing,
 1033 manufacturing, refining, mining or converting products for sale or resale. The provisions of this
 1034 subsection do not apply to the drilling, extraction, refining, or processing of oil, gas, natural gas and
 1035 coalbed methane gas. *In addition, the exemption provided herein shall not be applicable to any*
 1036 *machinery, tools, and equipment, or any other tangible personal property used by a public service*
 1037 *corporation in the generation of electric power, except for raw materials that are inputs to production*
 1038 *of electricity, including fuel.*

1039 3. Tangible personal property sold or leased to (i) a public service corporation subject to a state
 1040 franchise or license tax upon gross receipts, (ii) a telecommunications company as defined in
 1041 § 58.1-400.1 or (iii) a telephone company chartered in the Commonwealth which is exclusively a local
 1042 mutual association and is not designated to accumulate profits for the benefit of, or to pay dividends to,
 1043 the stockholders or members thereof, for use or consumption by such corporation, company, person or

1044 mutual association directly in the rendition of its public service; and tangible personal property sold or
1045 leased to a public service corporation engaged in business as a common carrier of property or
1046 passengers by motor vehicle or railway, for use or consumption by such common carrier directly in the
1047 rendition of its public service.

1048 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in
1049 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying
1050 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states
1051 of the United States or its territories or possessions, or in foreign commerce between ports in the
1052 Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or
1053 tangible personal property used directly in the building, conversion or repair of the ships or vessels
1054 covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant
1055 vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used
1056 exclusively or principally in interstate or foreign commerce.

1057 5. Tangible personal property purchased for use or consumption directly and exclusively in basic
1058 research or research and development in the experimental or laboratory sense.

1059 6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign
1060 commerce as a common carrier providing scheduled air service on a continuing basis to one or more
1061 Virginia airports at least one day per week, for use or consumption by such airline directly in the
1062 rendition of its common carrier service.

1063 7. Meals furnished by restaurants or food service operators to employees as a part of wages.

1064 8. Tangible personal property including machinery and tools, repair parts or replacements thereof,
1065 and supplies and materials used directly in maintaining and preparing textile products for rental or
1066 leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile
1067 products.

1068 9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any
1069 equipment that has not been certified to the Department of Taxation by a state certifying authority
1070 pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified
1071 pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such
1072 section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas
1073 production, including gas, natural gas, and coalbed methane gas.

1074 10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption
1075 directly in the rendition of their services.

1076 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
1077 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
1078 photocopying of products for sale or resale.

1079 12. From July 1, 1994, and ending July 1, 2006, raw materials, fuel, power, energy, supplies,
1080 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,
1081 extraction, refining, or processing of natural gas or oil and the reclamation of the well area. For the
1082 purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane
1083 gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," "refining," and
1084 "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw
1085 natural gas into a usable condition consistent with commercial practices, and the gathering and
1086 transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition.
1087 Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the
1088 preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or
1089 oil for sale or resale, or in well area reclamation activities required by state or federal law.

1090 13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or
1091 distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or
1092 space station of any kind possessing space flight capability, including the components thereof,
1093 irrespective of whether such facility, system, vehicle, satellite, or station is returned to this
1094 Commonwealth for subsequent use, storage or consumption in any manner when used to conduct
1095 spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal
1096 property placed on or used aboard any orbital or suborbital space facility, space propulsion system,
1097 space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal
1098 property is returned to this Commonwealth for subsequent use, storage or consumption in any manner
1099 when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary
1100 vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport
1101 activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment
1102 purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and
1103 services provided to operate and maintain launch facilities, launch equipment, payload processing
1104 facilities and payload processing equipment used to conduct spaceport activities.

1105 For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a

1106 facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.
 1107 The exemptions provided by this subdivision shall not be denied by reason of a failure,
 1108 postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion
 1109 system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or
 1110 any components thereof.

1111 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction
 1112 Program.

1113 A. Subject to the conditions of subsections D and E, The tax imposed by §§ 58.1-603 and 58.1-604
 1114 on food purchased for human consumption shall be levied and distributed as follows:

1115 1. From January 1, 2000, through ~~March 31, 2004~~ August 31, 2004, the tax rate on such food shall
 1116 be three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the
 1117 revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
 1118 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
 1119 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half
 1120 percent shall be used for general fund purposes.

1121 2. From ~~April 1, 2004~~ September 1, 2004, through ~~March 31, 2002~~ June 30, 2005, the tax rate on
 1122 such food shall be two and one-half percent of the gross sales price. The revenue from the tax shall be
 1123 distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as
 1124 provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be
 1125 distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at
 1126 the rate of one percent shall be used for general fund purposes.

1127 3. ~~From April 1, 2002, through March 31, 2003~~ Beginning July 1, 2005, the tax rate on such food
 1128 shall be two percent of the gross sales price. The revenue from the tax shall be distributed as follows:
 1129 (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection
 1130 A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided
 1131 in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half
 1132 percent shall be used for general fund purposes.

1133 4. Subject to the provisions of subsections D and E, ~~On and on or after April 1, 2003~~ 2007, the tax
 1134 rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax
 1135 shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be
 1136 distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one
 1137 percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

1138 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
 1139 consumption pursuant to §§ 58.1-605 and 58.1-606.

1140 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
 1141 defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted
 1142 pursuant to that Act, except it shall not include seeds and plants which produce food for human
 1143 consumption. For the purpose of this section, "food purchased for human consumption" shall not include
 1144 food sold by any retail establishment where the gross receipts derived from the sale of food prepared by
 1145 such retail establishment for immediate consumption on or off the premises of the retail establishment
 1146 constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not
 1147 limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises
 1148 of that retail establishment. For purposes of this section, "retail establishment" means each place of
 1149 business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a
 1150 certificate of registration pursuant to § 58.1-613.

1151 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased
 1152 for human consumption for any 12-month period beginning on or after ~~April 1, 2004~~ July 1, 2006, shall
 1153 not be reduced below the rate then in effect for the Commonwealth's current fiscal year if:

1154 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction
 1155 is contemplated in subsection A do not exceed the official general fund revenue estimates for such
 1156 preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act,
 1157 by at least one percent; or

1158 2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have
 1159 occurred during the then current fiscal year.

1160 E. If the tax rate on food purchased for human consumption remains the same for the period ~~January~~
 1161 ~~1, 2000~~ July 1, 2006, through March 31, ~~2004~~ 2007, and the subsequent 12-month period beginning on
 1162 April 1, ~~2004~~ 2007, or with respect to any consecutive 12-month periods beginning on and after April 1,
 1163 ~~2004~~ 2007, the tax rate on such food shall remain the same unless none of the conditions described in
 1164 subsection D have occurred, in which event the tax rate on food purchased for human consumption for
 1165 the immediately following 12-month period shall be equal to the next lowest tax rate listed in subsection
 1166 A.

1167 § 58.1-614. Vending machine sales.

1168 A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of
 1169 tangible personal property through vending machines, or in any other manner making collection of the
 1170 tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his
 1171 wholesale purchases for sale at retail from vending machines and shall be required to remit an amount
 1172 based on ~~four and one-half~~ *five* percent of such wholesale purchases.

1173 B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible
 1174 personal property through vending machines shall report and remit the one percent local sales and use
 1175 tax computed as provided in subsection A of this section.

1176 C. The provisions of subsections A and B of this section shall not be applicable to vending machine
 1177 operators all of whose machines are under contract to nonprofit organizations. Such operators shall
 1178 report only the gross receipts from machines selling items for more than ten cents and shall be required
 1179 to remit an amount based on a percentage of their remaining gross sales established by the Tax
 1180 Commissioner to take into account the inclusion of sales tax.

1181 D. Notwithstanding any other provisions in this section or § 58.1-628, when the Tax Commissioner
 1182 determines that it is impractical to collect the tax in the manner provided by those sections, such dealer
 1183 shall be required to remit an amount based on a percentage of gross receipts which takes into account
 1184 the inclusion of the sales tax.

1185 E. The provisions of this section shall not be applicable to any dealer who fails to maintain records
 1186 satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through
 1187 vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each
 1188 county or city in which he has machines.

1189 § 58.1-615. Returns by dealers.

1190 A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day
 1191 of the month following the month in which the tax shall become effective, transmit to the Tax
 1192 Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be,
 1193 arising from all transactions taxable under this chapter during the preceding calendar month, and
 1194 thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or
 1195 before the twentieth day of each month, for the preceding calendar month. In the case of dealers
 1196 regularly keeping books and accounts on the basis of an annual period which varies ~~fifty-two~~ 52 to
 1197 ~~fifty-three~~ 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent
 1198 with such accounting period.

1199 Notwithstanding any other provision of this chapter, a dealer may be required by the Tax
 1200 Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when,
 1201 in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would
 1202 be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or
 1203 before the twentieth day of the month following the close of the period. Each such return shall contain
 1204 all information required for monthly returns.

1205 A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable
 1206 to remit to the Tax Commissioner any tax for the period covered by the return.

1207 B. 1. In addition to the amounts required under the provisions of this section and § 58.1-616, any
 1208 dealer as defined by § 58.1-612 or direct payment permit holder pursuant to § 58.1-624, with taxable
 1209 sales and purchases of \$1,300,000 or greater for the ~~twelve~~ 12-month period beginning July 1, and
 1210 ending June 30 of the immediately preceding calendar year, shall be required to make a payment equal
 1211 to 90 percent of the sales and use tax liability for the previous June. Such tax payments shall be made
 1212 on or before the 30th day of June, if payment is made by electronic funds transfer, as defined in
 1213 § 58.1-202.1. If payment is made by other than electronic funds transfer, such payment shall be made on
 1214 or before the 25th day of June. For purposes of this provision, taxable sales or purchases shall be
 1215 computed without regard to the number of certificates of registration held by the dealer. Every dealer or
 1216 direct payment permit holder shall be entitled to a credit for the payment under this subsection on the
 1217 return for June of the current year due July 20. The provisions of this subsection shall not apply to
 1218 persons who are required to file only a Form ST-7, Consumer User Tax Return.

1219 2. In lieu of the penalties provided in § 58.1-635, except with respect to fraudulent returns, failure to
 1220 make a timely payment or full payment of the sales and use tax liability as provided in this subsection
 1221 shall subject the dealer or direct payment permit holder to a penalty of six percent of the amount of tax
 1222 underpayment that should have been properly paid to the Tax Commissioner. Interest will accrue as
 1223 provided in § 58.1-15. The payment required by this subsection shall become delinquent on the first day
 1224 following the due date set forth in this subsection if not paid.

1225 3. *This subsection shall be effective until June 1, 2005.*

1226 § 58.1-627. Bracket system for tax at rate of four percent.

1227 The ~~following~~ Tax Commissioner shall prepare brackets of prices that shall be used for the
 1228 collection of the tax imposed by this chapter: *on sales of less than five dollars.*

1229	\$0.00	to	\$0.14	no tax
1230	.15	to	.42	1¢ tax
1231	.43	to	.71	2¢ tax
1232	.72	to	.99	3¢ tax
1233	1.00	to	1.28	4¢ tax
1234	1.29	to	1.57	5¢ tax
1235	1.58	to	1.85	6¢ tax
1236	1.86	to	2.14	7¢ tax
1237	2.15	to	2.42	8¢ tax
1238	2.43	to	2.71	9¢ tax
1239	2.72	to	2.99	10¢ tax
1240	3.00	to	3.28	11¢ tax
1241	3.29	to	3.57	12¢ tax
1242	3.58	to	3.85	13¢ tax
1243	3.86	to	4.14	14¢ tax
1244	4.15	to	4.42	15¢ tax
1245	4.43	to	4.71	16¢ tax
1246	4.72	to	5.00	17¢ tax

1247
 1248 On transactions ~~over five dollars~~ *greater than five dollars*, the tax shall be computed at ~~three and~~
 1249 ~~one-half four~~ percent, one-half cent or more being treated as one cent. If a dealer can show to the
 1250 satisfaction of the Tax Commissioner that more than ~~eighty-five~~ 85 percent of the total dollar volume of
 1251 his gross taxable sales during the taxable month was from individual sales at prices of ~~ten~~ 10 cents or
 1252 less each, and that he was unable to adjust his prices in such manner as to prevent the economic
 1253 incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax
 1254 liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at
 1255 prices of eleven cents or more.

1256 § 58.1-628. Bracket system for combined state and local tax.

1257 The ~~following~~ *Tax Commissioner shall prepare* brackets of prices *that* shall be used for the
 1258 collection of the combined state and local tax: *on sales of less than five dollars.*

1259	\$0.00	to	\$0.11	no tax
1260	.12	to	.33	1¢ tax
1261	.34	to	.55	2¢ tax
1262	.56	to	.77	3¢ tax
1263	.78	to	.99	4¢ tax
1264	1.00	to	1.22	5¢ tax
1265	1.23	to	1.44	6¢ tax
1266	1.45	to	1.66	7¢ tax
1267	1.67	to	1.88	8¢ tax
1268	1.89	to	2.11	9¢ tax
1269	2.12	to	2.33	10¢ tax
1270	2.34	to	2.55	11¢ tax
1271	2.56	to	2.77	12¢ tax
1272	2.78	to	2.99	13¢ tax
1273	3.00	to	3.22	14¢ tax
1274	3.23	to	3.44	15¢ tax
1275	3.45	to	3.66	16¢ tax
1276	3.67	to	3.88	17¢ tax
1277	3.89	to	4.11	18¢ tax
1278	4.12	to	4.33	19¢ tax
1279	4.34	to	4.55	20¢ tax
1280	4.56	to	4.77	21¢ tax
1281	4.78	to	5.00	22¢ tax

1282
 1283 On transactions ~~over five dollars~~ *greater than five dollars*, the tax shall be computed at ~~four and~~
 1284 ~~one-half five~~ percent, one half cent or more being treated as one cent. The ~~foregoing~~ bracket system
 1285 shall not relieve the dealer from the duty and liability to remit an amount equal to ~~four and one-half~~ *five*

1286 percent of his gross taxable sales as provided in this chapter. If the dealer, however, can show to the
 1287 satisfaction of the Tax Commissioner that more than ~~eighty-five~~ 85 percent of the total dollar volume of
 1288 his gross taxable sales during the taxable month was from individual sales at prices of ~~ten~~ 10 cents or
 1289 less each and that he was unable to adjust his prices in such manner as to prevent the economic
 1290 incidence of the sales tax from falling on him, the Tax Commissioner shall determine the proper tax
 1291 liability of the dealer based on that portion of the dealer's gross taxable sales which was from sales at
 1292 prices of ~~eleven~~ 11 cents or more.

1293 § 58.1-639. Transitional provisions.

1294 A. To the extent of any increase in the state sales and use tax rate enacted by the ~~1986~~ 2004 Special
 1295 Session of the Virginia General Assembly, the Tax Commissioner, upon application of the purchaser in
 1296 accordance with regulations promulgated by the Commissioner, shall have the authority to refund state
 1297 sales or use taxes paid on purchases of tangible personal property made pursuant to bona fide real estate
 1298 construction contracts, contracts for the sale of tangible personal property, and leases, provided that the
 1299 real estate construction contract, contract for the sale of tangible personal property or lease is entered
 1300 into prior to the date of enactment of the increase of the state sales and use tax rate; and further
 1301 provided that the date of delivery of the tangible personal property is on or before ~~March 30, 1987~~
 1302 *November 30, 2004*. The term "bona fide contract," when used in this section in relation to real estate
 1303 construction contracts, shall include but not be limited to those contracts which are entered into prior to
 1304 the enactment of the increase in the state sales and use tax rate, provided that such contracts include
 1305 plans and specifications.

1306 B. Notwithstanding the foregoing ~~March 30, 1987~~ *November 30, 2004*, delivery date requirement,
 1307 with respect to bona fide real estate construction contracts which contain a specific and stated date of
 1308 completion, the date of delivery of such tangible personal property shall be on or before the completion
 1309 date of the applicable project.

1310 C. Applications for refunds pursuant to this section shall be made in accordance with the provisions
 1311 of § 58.1-1823. Interest computed in accordance with § 58.1-1833 shall be added to the tax refunded
 1312 pursuant to this section.

1313 § 58.1-801. Deeds generally; charter amendments.

1314 A. On every deed admitted to record, except a deed exempt from taxation by law, there is hereby
 1315 levied a state recordation tax. The rate of the tax shall be ~~fifteen~~ 25 cents on every \$100 or fraction
 1316 thereof of the consideration of the deed or the actual value of the property conveyed, whichever is
 1317 greater.

1318 Upon deeds conveying property lying partly within the Commonwealth and partly without the
 1319 Commonwealth, the tax herein imposed shall apply only to the value of so much of the property
 1320 conveyed as is situated within the Commonwealth.

1321 B. When the charter of a corporation is amended, and the only effect of such amendment is to
 1322 change the corporate name of such corporation, the tax upon the recordation of a deed conveying to, or
 1323 vesting in, such corporation under its changed name, the title to any or all of the real or personal
 1324 property of such corporation held in its name as it existed immediately prior to such amendment, shall
 1325 be ~~fifty~~ 50 cents.

1326 § 58.1-803. Deeds of trust or mortgages; maximum tax.

1327 A. A recordation tax on deeds of trust or mortgages is hereby imposed at a rate of ~~15~~ 25¢ on every
 1328 \$100 or portion thereof of the amount of bonds or other obligations secured thereby. In the event of an
 1329 open or revolving deed of trust, the amount of the obligation for purposes of this section shall be the
 1330 maximum amount which may be outstanding at any one time. In any case in which the amount which
 1331 may be secured under a deed of trust or mortgage is not ascertainable, the tax shall be based upon the
 1332 fair market value of the property conveyed, determined as of the date of the deed of trust or mortgage.
 1333 The fair market value of the property shall include the value of any realty required by the terms of the
 1334 deed of trust or mortgage to be constructed thereon.

1335 B. On deeds of trust or mortgages upon the works and property of a railroad lying partly within the
 1336 Commonwealth and partly without the Commonwealth, the tax shall be only upon such proportion of
 1337 the amount of bonds, or other obligations secured thereby, as the number of miles of the line of such
 1338 company in the Commonwealth bears to the whole number of miles of the line of such company
 1339 conveyed by such deed of trust or mortgage.

1340 Upon deeds of trust or mortgages conveying other property lying partly within the Commonwealth
 1341 and partly without the Commonwealth the tax herein imposed shall be only upon such proportion of the
 1342 debt secured as the value of the property located within the Commonwealth, or which may be brought
 1343 into the Commonwealth, bears to the entire amount of property conveyed by such deed of trust or
 1344 mortgage.

1345 C. On deeds of trust or mortgages, which provide for an initial issue of bonds, to be followed
 1346 thereafter by additional bonds, unlimited in amount, if such deed of trust or mortgage provides that as
 1347 and when such additional bonds are issued a supplemental indenture shall be recorded in the office in

1348 which the original deed of trust or mortgage is first recorded, which supplement shall contain a
 1349 statement as to the amount of the additional bonds to be issued, then the tax shall be paid upon the
 1350 initial amount of bonds when the original deed of trust is recorded and thereafter on each additional
 1351 amount of bonds when the supplemental indenture relating to such additional bonds is recorded.

1352 On deeds of trust or mortgages which are supplemental to or wrap around existing deeds of trust on
 1353 which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the
 1354 face amount of the bond or obligation secured thereby which is in addition to the amount of the existing
 1355 debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the
 1356 amount of the existing debt.

1357 D. On deeds of trust or mortgages, the purpose of which is to refinance or modify the terms of an
 1358 existing debt with the same lender, which debt is secured by a deed of trust or mortgage on which the
 1359 tax imposed hereunder has been paid, the tax shall be paid only on that portion of the amount of the
 1360 bond or other obligation secured thereby which is in addition to the amount of the original debt secured
 1361 by a deed of trust or mortgage on which the tax has been paid. The instrument shall certify the amount
 1362 of original debt.

1363 E. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture
 1364 supplemental thereto shall be determined in accordance with the following schedule:

1365 On the first 10 million dollars of value as determined pursuant to this section, [~~25~~ 15¢] upon every
 1366 \$100 or portion thereof;

1367 On the next 10 million dollars of value as determined pursuant to this section, [~~22~~ 12¢] upon every
 1368 \$100 or portion thereof;

1369 On the next 10 million dollars of value as determined pursuant to this section, [~~19~~ 9¢] upon every
 1370 \$100 or portion thereof;

1371 On the next 10 million dollars of value as determined pursuant to this section, [~~16~~ 6¢] upon every
 1372 \$100 or portion thereof; and

1373 On all over 40 million dollars of value as determined pursuant to this section, [~~13~~ 3¢] upon every
 1374 \$100 or portion thereof, incorporated into this section.

1375 § 58.1-807. Contracts generally; leases.

1376 A. Except as hereinafter provided, on every contract or memorandum thereof relating to real or
 1377 personal property admitted to record, a recordation tax is hereby levied at the rate of ~~fifteen~~ 25 cents on
 1378 every \$100 or fraction thereof of the consideration or value contracted for.

1379 B. The recordation of a deed of lease for a term of years, or assignment of the lessee's interest
 1380 therein, or memorandum thereof, shall be taxed according to the provisions of this section, unless
 1381 provided otherwise in § 58.1-809 or unless the annual rental, multiplied by the term for which the lease
 1382 runs, or remainder thereof, equals or exceeds the actual value of the property leased. In such cases the
 1383 tax for recording the deed of lease shall be based upon the actual value of the property at the date of
 1384 lease, including the value of any realty required by the terms of the lease to be constructed thereon by
 1385 the lessor.

1386 C. The recordation of an assignment of the lessor's interest in a lease, or memorandum thereof, shall
 1387 be taxed according to the provisions of this section, unless the assignment of the lessor's interest in the
 1388 lease is to provide additional security for an obligation of the lessor on which the tax has been
 1389 previously paid, or the assignment of the lessor's interest is made to the person who owns the property
 1390 which is subject to the lease. In such cases there shall be no tax for recording the lessor's assignment of
 1391 the lease.

1392 D. Notwithstanding the other provisions of this section, the tax on the recordation of leases of oil
 1393 and gas rights shall not exceed ~~twenty-five dollars~~ \$25. The tax on the recordation of leases of coal and
 1394 other mineral rights shall not exceed ~~fifty dollars~~ \$50.

1395 E. Notwithstanding the other provisions of this section, the tax on the recordation of leases of
 1396 outdoor advertising signs owned by a person engaged in the business of outdoor advertising licensed by
 1397 the Virginia Department of Transportation pursuant to § 33.1-361 shall not exceed ~~twenty-five dollars~~
 1398 \$25.

1399 § 58.1-808. Sales contracts for the sale of rolling stock or equipment.

1400 On every contract or agreement admitted to record relating to the sale of rolling stock or equipment,
 1401 whether the title is reserved in the vendor or not, with a railroad corporation or other corporation or
 1402 with a person, firm or company, the tax shall be ~~15~~ 25¢ on every \$100 or fraction thereof of the amount
 1403 contracted for in such contract or agreement. When such contract or agreement is with a railroad
 1404 corporation lying partly within the Commonwealth and partly without the Commonwealth, the tax shall
 1405 be upon such proportion of the amount contracted for as the number of miles of the line of such
 1406 railroad corporation in the Commonwealth bears to the whole number of miles of line of such railroad
 1407 corporation.

1408 § 58.1-901. Definitions.

1409 As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

1410 "Decedent" means a deceased person.

1411 "Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011
 1412 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision,
 1413 in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full
 1414 advantage of such credit as the laws of the United States may allow. ~~In no event, however, shall such~~
 1415 ~~amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on~~
 1416 ~~January 1, 1978. In the case of a decedent dying on or after November 1, 2004, and before January 1,~~
 1417 ~~2005, the federal credit shall be deemed to be zero for purposes of the Virginia estate tax.~~

1418 "Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code
 1419 of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

1420 "Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his
 1421 death.

1422 "Personal representative" means the personal representative of the estate of the decedent, appointed,
 1423 qualified and acting within the Commonwealth, or, if there is no personal representative appointed,
 1424 qualified and acting within the Commonwealth, then any person in actual or constructive possession of
 1425 the Virginia gross estate of the decedent.

1426 "Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

1427 "State" means any state, territory or possession of the United States and the District of Columbia.

1428 "Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue
 1429 Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

1430 "Value" means "value" as finally determined for federal estate tax purposes under the laws of the
 1431 United States relating to federal estate taxes.

1432 Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes
 1433 means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other
 1434 provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be
 1435 or become effective at any time or from time to time.

1436 § 58.1-1001. Tax levied; rate; transitional provisions; bonds and letters of credit.

1437 A. In addition to all other taxes now imposed by law, every person within this Commonwealth who
 1438 sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of
 1439 distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of
 1440 ~~one and one-quarter mills~~ *1 cent* on each such cigarette *through June 30, 2005. On and after July 1,*
 1441 *2005, the rate of such tax shall be 1.5 cents per cigarette.*

1442 B. *The Tax Commissioner shall establish guidelines and rules for the transitional procedures*
 1443 *regarding the imposition of the increased cigarette tax rate under this section. The guidelines and rules*
 1444 *issued by the Tax Commissioner regarding the imposition of the increased cigarette tax rate shall be*
 1445 *exempt from the Administrative Process Act (§ 2.2-4000 et seq.).*

1446 C. *The Tax Commissioner, in his sole discretion, may accept (i) a bond with a corporate surety or*
 1447 *(ii) an irrevocable letter of credit from any person holding a current permit issued pursuant to*
 1448 *§ 58.1-1011 and provide to that person Virginia revenue stamps without concurrent payment of the tax*
 1449 *imposed under this chapter. The Tax Commissioner shall establish guidelines and rules for such bonds*
 1450 *and letters of credit. Such guidelines and rules shall be exempt from the Administrative Process Act*
 1451 *(§ 2.2-4000 et seq.). The Tax Commissioner, in his sole discretion, may require any person to pay the*
 1452 *tax imposed under this chapter concurrent with obtaining revenue stamps from the Department,*
 1453 *regardless of whether or not such person has filed or agreed to file a bond or letter of credit.*

1454 § 58.1-3833. County food and beverage tax.

1455 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human
 1456 consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed ~~eight~~
 1457 ~~and one-half percent, when added to the state and local general sales and use tax,~~ *four percent* of the
 1458 amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold
 1459 through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as
 1460 well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and
 1461 convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall
 1462 be subject to the tax, for that portion of the grocery store or convenience store selling such items.

1463 This tax shall be levied only if the tax is approved in a referendum within the county which shall be
 1464 held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on
 1465 the filing of a petition signed by a number of registered voters of the county equal in number to 10
 1466 percent of the number of voters registered in the county, as appropriate on January 1 of the year in
 1467 which the petition is filed with the court of such county. The clerk of the circuit court shall publish
 1468 notice of the election in a newspaper of general circulation in the county once a week for three
 1469 consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall
 1470 be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such

1471 resolution of the board of supervisors or such petition states for what projects and/or purposes the
1472 revenues collected from the tax are to be used, then the question on the ballot for the referendum shall
1473 include language stating for what projects and/or purposes the revenues collected from the tax are to be
1474 used.

1475 The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and
1476 nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently
1477 imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection
1478 of such tax shall be in a manner prescribed by the governing body.

1479 B. Notwithstanding the provisions of subsection A of this section, any county with a population of at
1480 least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more
1481 than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county
1482 having a county manager plan of government are hereby authorized to levy a tax on food and beverages
1483 sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in
1484 subsection A above and subject to the same exemptions, not to exceed four percent of the amount
1485 charged for such food and beverages, provided that the governing body of the respective county holds a
1486 public hearing before adopting a local food and beverage tax, and the governing body by unanimous
1487 vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as
1488 the governing body may by ordinance prescribe.

1489 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
1490 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
1491 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
1492 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.
1493 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
1494 law shall constitute embezzlement pursuant to § 18.2-111.

1495 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
1496 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

1497 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
1498 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
1499 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
1500 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
1501 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
1502 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

- 1503 **2. That §§ 58.1-390 and 58.1-394 of the Code of Virginia are repealed.**
- 1504 **3. That the provisions of this act amending §§ 58.1-302, 58.1-391, 58.1-392, 58.1-402, and 58.1-441**
- 1505 **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**
- 1506 **the Code of Virginia shall apply for taxable years beginning on and after January 1, 2004.**
- 1507 **4. That the provisions of this act amending § 58.1-901 of the Code of Virginia shall apply only to**
- 1508 **the estates of those persons who die on or after November 1, 2004.**
- 1509 **5. That notwithstanding any provision of law to the contrary, any public utility that is subject to a**
- 1510 **sales and use tax on tangible personal property purchased or leased for use or consumption by**
- 1511 **such utility in the rendition of its service as a public utility is hereby authorized to recover from**
- 1512 **each customer that customer's pro rata share of the public utility's actual expense therefor by**
- 1513 **means of a sales and use tax surcharge to recover any sales and use tax expenditures that are**
- 1514 **incurred as a result of the elimination of the public utility's exemption from taxation pursuant to**
- 1515 **§ 58.1-609.3. In determining the amount of surcharge and in imposing the same, the public utility**
- 1516 **is not required to initiate a rate case hearing. However, the amount of the surcharge shall be**
- 1517 **verified by the State Corporation Commission in the year subsequent to the surcharge. If the State**
- 1518 **Corporation Commission determines that the amount of the surcharge exceeded the actual sales**
- 1519 **and use tax incurred as a result of the amendments to § 58.1-609.3, a surcharge adjustment shall**
- 1520 **be applied in the following year to return the overcharge to customers.**
- 1521 **6. That the provisions of this act shall not become effective unless a general appropriation act is**
- 1522 **enacted by the General Assembly for the 2004-2006 biennium [by midnight April 24, 2004] .**