

2004 SPECIAL SESSION I

SENATE SUBSTITUTE

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HOUSE BILL NO. 5018

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance on April 26, 2004)

(Patron Prior to Substitute—Delegate Parrish)

A BILL to amend and reenact §§ 58.1-302, 58.1-321, 58.1-322, 58.1-339.8, 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, 58.1-626, 58.1-638, 58.1-639, 58.1-801, 58.1-803, 58.1-807, 58.1-808, 58.1-1001, 58.1-1009, 58.1-1018, 58.1-1206, and 58.1-3833 of the Code of Virginia, to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 15, consisting of sections numbered 32.1-366 and 32.1-367, by adding sections numbered 58.1-390.1, 58.1-390.2, and 58.1-393.1, by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395, by adding sections numbered 58.1-628.2 and 58.1-638.1, and by adding in Chapter 10 of Title 58.1 an article numbered 2.1, consisting of sections numbered 58.1-1021.01 through 58.1-1021.05, and to repeal §§ 58.1-390, 58.1-394, 58.1-627, and 58.1-628 of the Code of Virginia, relating to revenues for appropriation throughout the Commonwealth and its localities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-302, 58.1-321, 58.1-322, 58.1-339.8, 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, 58.1-626, 58.1-638, 58.1-639, 58.1-801, 58.1-803, 58.1-807, 58.1-808, 58.1-1001, 58.1-1009, 58.1-1018, 58.1-1206, and 58.1-3833 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 15, consisting of sections numbered 32.1-366 and 32.1-367, by adding sections numbered 58.1-390.1, 58.1-390.2, and 58.1-393.1, by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395, by adding sections numbered 58.1-628.2 and 58.1-638.1, and by adding in Chapter 10 of Title 58.1 an article numbered 2.1, consisting of sections numbered 58.1-1021.01 through 58.1-1021.05, as follows:

CHAPTER 15.

VIRGINIA HEALTH CARE FUND.

§ 32.1-366. Virginia Health Care Fund Established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Health Care Fund, hereafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. For purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813, however, all deposits to and disbursements from the Fund shall be accounted for as part of the general fund of the state treasury.

B. All revenue received by the Commonwealth pursuant to the provisions of §§ 58.1-1001 and 58.1-1018 and Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 shall be paid into the state treasury and deposited to the Fund. The Comptroller shall also deposit 40 percent of the Commonwealth's allocation pursuant to the Master Settlement Agreement with tobacco product manufacturers, as defined in § 3.1-1106, to the Fund. The Fund shall also consist of all recoveries received during a fiscal year resulting from expenditures incurred in the Medicaid program during a prior fiscal year or years to the extent that such amounts represent recoveries of state funds that would otherwise be deposited to the general fund of the state treasury.

§ 32.1-367. Uses of Virginia Health Care Fund.

Moneys deposited to the Fund shall be used solely for the provision of health care services. Such moneys shall be appropriated as provided in the general appropriation act. Health care services include, but are not limited to, Medicaid payments, disease diagnosis, prevention and control, and community health services.

§ 58.1-302. Definitions.

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

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

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

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

"Domicile" means the permanent place of residence of a taxpayer and the place to which he intends

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

67 "Foreign source income" means:

- 68 1. Interest, other than interest derived from sources within the United States;
- 69 2. Dividends, other than dividends derived from sources within the United States;
- 70 3. Rents, royalties, license, and technical fees from property located or services performed without
 71 the United States or from any interest in such property, including rents, royalties, or fees for the use of
 72 or the privilege of using without the United States any patents, copyrights, secret processes and
 73 formulas, good will, trademarks, trade brands, franchises, and other like properties;
- 74 4. Gains, profits, or other income from the sale of intangible or real property located without the
 75 United States; and

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

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

82 "Income and deductions from Virginia sources" includes:

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

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

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

93 "*Intangible expenses and costs*" means:

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

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

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

101 4. *Licensing fees; and*

102 5. *Other similar expenses and costs.*

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

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

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

111 "*Related entity*" means:

112 1. *A stockholder who is an individual, or a member of the stockholder's family enumerated in Section*
 113 *318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own,*
 114 *directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of*
 115 *the taxpayer's outstanding stock;*

116 2. *A stockholder, or a stockholder's partnership, limited liability company, estate, trust or*
 117 *corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates,*
 118 *trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least*
 119 *50 percent of the value of the taxpayer's outstanding stock; or*

120 3. *A corporation, or a party related to the corporation in a manner that would require an attribution*
 121 *of stock from the corporation to the party or from the party to the corporation under the attribution*

122 *rules of Section 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially*
 123 *or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution*
 124 *rules of Section 318 of the Internal Revenue Code shall apply for purposes of determining whether the*
 125 *ownership requirements of this subdivision have been met.*

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

130 *"Resident" applies only to natural persons and includes, for the purpose of determining liability for*
 131 *the taxes imposed by this chapter upon the income of any taxable year every person domiciled in*
 132 *Virginia at any time during the taxable year and every other person who, for an aggregate of more than*
 133 *183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in*
 134 *Virginia or not. The word "resident" shall not include any member of the United States Congress who is*
 135 *domiciled in another state.*

136 *"Resident estate or trust" means:*

- 137 1. *The estate of a decedent who at his death was domiciled in the Commonwealth;*
- 138 2. *A trust created by will of a decedent who at his death was domiciled in the Commonwealth;*
- 139 3. *A trust created by or consisting of property of a person domiciled in the Commonwealth; or*
- 140 4. *A trust or estate which is being administered in the Commonwealth.*

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

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

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

148 *"Virginia fiduciary adjustment" means the net amount of the applicable modifications described in*
 149 *§ 58.1-322 (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust)*
 150 *which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment*
 151 *shall not include the modification in subsection D of § 58.1-322, except that the amount of state income*
 152 *taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also*
 153 *include the modification in subsection D of § 58.1-322, regarding the deduction for the purchase of a*
 154 *prepaid tuition contract or contribution to a savings trust account.*

155 *§ 58.1-321. Exemptions and exclusions.*

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

- 157 1. *A single individual where the Virginia adjusted gross income for such taxable year is less than*
 158 *\$3,000 for taxable years beginning before January 1, 1987; and less than \$5,000 for taxable years*
 159 *beginning on and after January 1, 1987; but before January 1, 2004.*

160 *A single individual where the Virginia adjusted gross income plus the modification specified in*
 161 *subdivision D 5 of § 58.1-322 for such taxable year is less than \$5,000 for taxable years beginning on*
 162 *and after January 1, 2004, but before January 1, 2005.*

163 *A single individual where the Virginia adjusted gross income plus the modification specified in*
 164 *subdivision D 5 of § 58.1-322 for such taxable year is less than \$7,000 for taxable years beginning on*
 165 *and after January 1, 2005.*

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

170 *An individual and spouse if their combined Virginia adjusted gross income plus the modification*
 171 *specified in subdivision D 5 of § 58.1-322 is less than \$8,000 for taxable years beginning on and after*
 172 *January 1, 2004, (or one-half of such amount in the case of a married individual filing a separate*
 173 *return) but before January 1, 2005; and less than \$14,000 for taxable years beginning on and after*
 174 *January 1, 2005 (or one-half of such amount in the case of a married individual filing a separate*
 175 *return).*

176 *For the purposes of this section "Virginia adjusted gross income" means federal adjusted gross*
 177 *income for the taxable years with the modifications specified in § 58.1-322 B, § 58.1-322 C and the*
 178 *additional deductions allowed under § 58.1-322 D 2 b and D 5 for taxable years beginning before*
 179 *January 1, 2004. For taxable years beginning on and after January 1, 2004, Virginia adjusted gross*
 180 *income means federal adjusted gross income with the modifications specified in subsections B and C of*
 181 *§ 58.1-322.*

- 182 *B. Persons in the armed forces of the United States stationed on military or naval reservations within*

183 Virginia who are not domiciled in Virginia shall not be held liable to income taxation for compensation
184 received from military or naval service.

185 § 58.1-322. Virginia taxable income of residents.

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

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

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

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

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

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

203 5. through 8. [Repealed.]

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

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

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

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

214 3. [Repealed.]

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

217 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
218 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on
219 the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of
220 the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of
221 subsection D of this section may not also claim a subtraction under this subdivision.

222 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as
223 defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a
224 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under
225 this subdivision.

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

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

230 7, 8. [Repealed.]

231 9. [Expired.]

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

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

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

244 13. [Repealed.]

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

247 15, 16. [Repealed.]

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

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

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

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

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

277 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
278 exchange of real property or the sale or exchange of an easement to real property which results in the
279 real property or the easement thereto being devoted to open-space use, as that term is defined in
280 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
281 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
282 shall be allowed for three years following the year in which the subtraction is taken.

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

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

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

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

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

301 28. For taxable years beginning on and after January 1, 2000, items of income attributable to,
302 derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an
303 individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other
304 consideration received by a victim or target of Nazi persecution to compensate such individual for
305 performing labor against his will under the threat of death, during World War II and its prelude and

306 direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with
307 the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II
308 and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this
309 subdivision shall only apply to an individual who was the first recipient of such items of income and
310 who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of
311 such victim.

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

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

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

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

330 30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
331 2005, the indemnification payments received by contract poultry growers and table egg producers from
332 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
333 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
334 poultry who contract with poultry growers qualify for this subtraction.

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

340 D. In computing Virginia taxable income there shall be deducted from ~~federal~~ Virginia adjusted gross
341 income *as defined in § 58.1-321*:

342 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
343 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
344 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
345 on such federal return and increased by an amount which, when added to the amount deducted under
346 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
347 such purposes at a rate of 18 cents per mile; or

348 b. ~~Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987;~~
349 ~~\$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for~~
350 ~~married persons (one-half of such amounts in the case of a married individual filing a separate return);~~
351 ~~and \$3,000~~ *Three thousand dollars* for single individuals for taxable years beginning on and after
352 January 1, 1989; *\$5,000 for married persons (one-half of such amounts in the case of a married*
353 *individual filing a separate return) for taxable years beginning on and after January 1, 1989, but before*
354 *January 1, 2005; and \$6,000 for married persons (one-half of such amounts in the case of a married*
355 *individual filing a separate return) for taxable years beginning on and after January 1, 2005; provided*
356 *that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For*
357 *purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for*
358 *the taxable year may compute the deduction only with respect to earned income.*

359 2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through
360 December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, *but before*
361 *January 1, 2006, and \$900 for taxable years beginning on and after January 1, 2006, for each personal*
362 *exemption allowable to the taxpayer for federal income tax purposes.*

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

366 b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December
367 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The

368 additional deduction for blind or aged taxpayers allowed under this subdivision ~~and the additional~~
 369 ~~personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection~~ shall be
 370 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
 371 tax purposes.

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

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

378 5. *a. Effective for all taxable years beginning on or after January 1, 1996, but before January 1,*
 379 *2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age*
 380 *62 through 64.*

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

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

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

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

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

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

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

420 *b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January*
 421 *1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,*
 422 *1998, and shall be subject to the limitations set out in subdivision 7 a.*

423 *c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained*
 424 *age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$2,000 per*
 425 *prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a*
 426 *deduction for the full amount paid for the contract or contributed to a savings trust account, less any*
 427 *amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during*
 428 *taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take*

429 the deduction for the full amount paid during such years, less any amounts previously deducted with
 430 respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.

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

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

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

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

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

449 § 58.1-339.8. Income tax credit for low-income taxpayers.

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

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

454 "Poverty guidelines" means the poverty guidelines for the ~~forty-eight~~48 contiguous states and the
 455 District of Columbia updated annually in the Federal Register by the U.S. Department of Health and
 456 Human Services under the authority of § 673 (2) of the Omnibus Budget Reconciliation Act of 1981.

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

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

468 2. *For taxable years beginning on and after January 1, 2006, any individual or married persons,*
 469 *eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu*
 470 *of the credit authorized under subdivision B 1, claim a credit against the tax imposed pursuant to*
 471 *§ 58.1-320 in an amount equal to 20 percent of the credit claimed by the individual or married persons*
 472 *for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year.*
 473 *In no case shall a household be allowed a credit pursuant to this subdivision and subdivision B 1 for*
 474 *the same taxable year.*

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

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

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

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

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

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

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

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

490 § 58.1-390.1. *Definitions.*

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

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

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

500 § 58.1-390.2. Taxation of pass-through entities.

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

503 § 58.1-391. Virginia taxable income of owners of a pass-through entity.

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

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

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

523 § 58.1-392. Reports by pass-through entities.

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

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

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

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

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

547 E. Pass-through entities may be required to file the return using an electronic medium prescribed by
 548 the Tax Commissioner. The Tax Commissioner shall establish a minimum number of owners for the
 549 electronic filing requirement. Waivers shall be granted only if the Tax Commissioner finds that the
 550 requirement creates an unreasonable burden on the pass-through entity. All requests for waivers must be
 551 submitted to the Tax Commissioner in writing. A pass-through entity that has fewer than the established

552 *minimum number of owners may, at such pass-through entity's option, file such annual return on such*
553 *prescribed electronic medium in lieu of filing the annual return on paper.*

554 *§ 58.1-393.1. Extension of time for filing return by pass-through entity.*

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

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

562 *§ 58.1-394.1. Failure of pass-through entity to make a return.*

563 *A. Any pass-through entity that fails to file a return required by this article within the time required*
564 *shall be liable for a penalty of \$200 if the failure is for not more than one month, with an additional*
565 *\$200 for each additional month or fraction thereof during which such failure to file continues, not*
566 *exceeding six months in the aggregate. In no case, however, shall the penalty be less than \$200.*

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

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

577 *§ 58.1-394.2. Fraudulent returns, etc., of pass-through entities; penalty.*

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

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

589 *§ 58.1-395. Nonresident owners.*

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

595 *§ 58.1-402. Virginia taxable income.*

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

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

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

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

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

611 *3. [Repealed.]*

612 *4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which*
613 *are based on, measured by, or computed with reference to net income, imposed by the Commonwealth*

614 or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

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

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

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

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

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

629 *(2) The related member derives at least one-third of its gross revenues from the licensing of
630 intangible property to parties who are not related members, and the transaction giving rise to the
631 expenses and costs between the corporation and the related member was made at rates and terms
632 comparable to the rates and terms of agreements that the related member has entered into with parties
633 who are not related members for the licensing of intangible property; or*

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

640 *b. A corporation required to add to its federal taxable income intangible expenses and costs
641 pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return
642 for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under
643 this article for such taxable year including tax upon any amount of intangible expenses and costs
644 required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating
645 to the transaction or transactions between the corporation and a related member or members that
646 resulted in the corporation's taxable income being increased, as required under subdivision a, for such
647 intangible expenses and costs.*

648 *If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
649 convincing evidence, that the transaction or transactions between the corporation and a related member
650 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
651 purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner
652 shall permit the corporation to file an amended return. For purposes of such amended return, the
653 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is
654 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance
655 or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation
656 within one year of the written permission granted by the Tax Commissioner and any refund of the tax
657 imposed under this article shall include interest at a rate equal to the rate of interest established under
658 § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of
659 such amended return, any related member of the corporation that subtracted from taxable income
660 amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on
661 that portion of such amounts for which the corporation has filed an amended return pursuant to this
662 subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he
663 has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation
664 in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and
665 costs without making the adjustment under subdivision a.*

666 *The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of
667 any petition pursuant to this subdivision, to include costs necessary to secure outside experts in
668 evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this
669 subdivision upon payment of such fee.*

670 *No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision
671 shall be maintained in any court of this Commonwealth.*

672 *c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under
673 § 58.1-446.*

674 *9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses*

675 and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with
676 one or more direct or indirect transactions with one or more related members to the extent such
677 expenses and costs were deductible or deducted in computing federal taxable income for Virginia
678 purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

679 (1) The related member has substantial business operations relating to interest-generating activities,
680 in which the related member pays expenses for at least five full-time employees who maintain, manage,
681 defend or are otherwise responsible for operations or administration relating to the interest-generating
682 activities; and

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

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

689 (4) One of the following applies:

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

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

695 (iii). The related member engages in transactions with parties other than related members that
696 generate revenue in excess of \$2 million annually; or

697 (iv). The transaction giving rise to the interest payments between the corporation and a related
698 member was done at arm's length rates and terms and meets any of the following: (a) the related
699 member uses funds that are borrowed from a party other than a related member or that are paid,
700 incurred or passed-through to a person who is not a related member; (b) the debt is part of a regular
701 and systematic funds management or portfolio investment activity conducted by the related member,
702 whereby the funds of two or more related members are aggregated for the purpose of achieving
703 economies of scale, the internal financing of the active business operations of members, or the benefit of
704 centralized management of funds; (c) financing the expansion of the business operations; or (d)
705 restructuring the debt of related members, or the pass-through of acquisition-related indebtedness to
706 related members.

707 b. A corporation required to add to its federal taxable income interest expenses and costs pursuant
708 to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the
709 taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this
710 article for such taxable year including tax upon any amount of interest expenses and costs required to
711 be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the
712 transaction or transactions between the corporation and a related member or members that resulted in
713 the corporation's taxable income being increased, as required under subdivision a, for such interest
714 expenses and costs.

715 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
716 convincing evidence, that the transaction or transactions between the corporation and a related member
717 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
718 purpose other than the avoidance or reduction of the tax due under this chapter and that the related
719 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall
720 permit the corporation to file an amended return. For purposes of such amended return, the
721 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is
722 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance
723 or reduction of the tax due under this chapter and that the related payments between the parties were
724 made at arm's length rates and terms. Such amended return shall be filed by the corporation within one
725 year of the written permission granted by the Tax Commissioner and any refund of the tax imposed
726 under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15
727 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such
728 amended return, any related member of the corporation that subtracted from taxable income amounts
729 received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that
730 portion of such amounts for which the corporation has filed an amended return pursuant to this
731 subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he
732 has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation
733 in filing income tax returns for subsequent taxable years to deduct the related interest expenses and
734 costs without making the adjustment under subdivision a.

735 The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of
736 any petition pursuant to this subdivision, to include costs necessary to secure outside experts in

737 *evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this*
 738 *subdivision upon payment of such fee.*

739 *No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision*
 740 *shall be maintained in any court of this Commonwealth.*

741 *c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under*
 742 *§ 58.1-446.*

743 *d. For purposes of subdivision B 9:*

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

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

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

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

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

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

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

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

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

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

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

776 *9. [Repealed.]*

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

779 *11. [Repealed.]*

780 *12. [Expired.]*

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

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

786 *15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in*
 787 *funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1*
 788 *(§ 22.1-175.1 et seq.) of Title 22.1.*

789 *16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or*
 790 *exchange of real property or the sale or exchange of an easement to real property which results in the*
 791 *real property or the easement thereto being devoted to open-space use, as that term is defined in*
 792 *§ 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in*
 793 *accordance with this subdivision, no tax credit under this chapter for donating land for its preservation*
 794 *shall be allowed for three years following the year in which the subtraction is taken.*

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

797 *18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the*

798 "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement
799 Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part
800 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b) any business
801 holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
802 Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota
803 allotment.

804 19. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
805 2005, the indemnification payments received by contract poultry growers and table egg producers from
806 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
807 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
808 poultry who contract with poultry growers qualify for this subtraction.

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

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

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

817 21. *For taxable years beginning on and after January 1, 2004, any amount of intangible expenses*
818 *and costs or interest expenses and costs added to the federal taxable income of a corporation pursuant*
819 *to subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member*
820 *that received such amount if such related member is subject to Virginia income tax on the same amount.*

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

823 § 58.1-441. Reports by corporations.

824 A. Every corporation organized under the laws of the Commonwealth, or having income from
825 Virginia sources, *other than a Subchapter S corporation subject to the return filing requirements of*
826 *§ 58.1-392*, shall make a report to the Department on or before the fifteenth day of the fourth month
827 following the close of its taxable year. Such reports shall be made on forms prescribed by the
828 Department and shall contain such information, including the gross receipts from any business carried on
829 in the Commonwealth and a depreciation schedule of property used in such trade or business, as may be
830 necessary for the proper enforcement of this chapter and be accompanied by a copy of any federal tax
831 return or report filed for such taxable year. The Department shall not require any nonprofit organization
832 created exclusively to assist a law-enforcement official or agency in apprehending and convicting
833 perpetrators of crimes, to report on such returns, or otherwise, the names of individuals or amounts paid
834 to such individuals by the organization for providing information about certain crimes.

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

841 B. Notwithstanding the provisions of subsection A, every organization to whom subdivision 5 of
842 § 58.1-401 applies, and having unrelated business taxable income or other taxable income, shall make a
843 report to the Department on or before the fifteenth day of the sixth month following the close of the
844 organization's taxable year.

845 § 58.1-603. Imposition of sales tax.

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

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

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

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

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

862 5. Of the gross sales of any services which are expressly stated as taxable within this chapter.
863 § 58.1-604. Imposition of use tax.

864 There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a
865 tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of
866 such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount
867 of three and one-half percent *through midnight on July 31, 2004, and four percent beginning on and*
868 *after August 1, 2004:*

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

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

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

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

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

889 § 58.1-604.1. Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for
890 use in performing contracts.

891 In addition to the use tax levied pursuant to § 58.1-604 and notwithstanding the provisions of
892 § 58.1-611, a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools
893 or other equipment brought, imported or caused to be brought into this Commonwealth for use in
894 constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or
895 water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant,
896 transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any
897 part thereof. The rate of tax is three and one-half percent *through midnight on July 31, 2004, and four*
898 *percent beginning on and after August 1, 2004,* on all tangible personal property except motor vehicles,
899 which shall be taxed at the rate of three percent; aircraft, which shall be taxed at the rate of two
900 percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.

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

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

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

918 § 58.1-605. To what extent and under what conditions cities and counties may levy local sales taxes;
919 collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

920 A. No county, city or town shall impose any local general sales or use tax or any local general retail

921 sales or use tax except as authorized by this section.

922 B. The council of any city and the governing body of any county may levy a general retail sales tax
923 at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall
924 be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to
925 all the provisions of this chapter and the rules and regulations published with respect thereto. The
926 applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local tax.
927 No discount under § 58.1-622 shall be allowed on a local sales tax.

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

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

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

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

960 G. Such payments to counties are subject to the qualification that in any county wherein is situated
961 any incorporated town constituting a special school district and operated as a separate school district
962 under a town school board of three members appointed by the town council, the county treasurer shall
963 pay into the town treasury for general governmental purposes the proper proportionate amount received
964 by him in the ratio that the school age population of such town bears to the school age population of
965 the entire county. If the school age population of any town constituting a separate school district is
966 increased by the annexation of territory since the last preceding school age population census, such
967 increase shall, for the purposes of this section, be added to the school age population of such town as
968 shown by the last such census and a proper reduction made in the school age population of the county
969 or counties from which the annexed territory was acquired.

970 H. One-half of such payments to counties are subject to the further qualification, other than as set
971 out in subsection G above, that in any county wherein is situated any incorporated town not constituting
972 a separate special school district which has complied with its charter provisions providing for the
973 election of its council and mayor for a period of at least four years immediately prior to the adoption of
974 the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for
975 general governmental purposes the proper proportionate amount received by him in the ratio that the
976 school age population of each such town bears to the school age population of the entire county, based
977 on the latest statewide school census. The preceding requirement pertaining to the time interval between
978 compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city.
979 If the school age population of any such town not constituting a separate special school district is
980 increased by the annexation of territory or otherwise since the last preceding school age population
981 census, such increase shall, for the purposes of this section, be added to the school age population of
982 such town as shown by the last such census and a proper reduction made in the school age population

983 of the county or counties from which the annexed territory was acquired.

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

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

996 § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax;
997 collection thereof by Commonwealth and return of revenues to the cities and counties.

998 A. The council of any city and the governing body of any county which has levied or may hereafter
999 levy a city or county sales tax under § 58.1-605 may levy a city or county use tax at the rate of one
1000 percent to provide revenue for the general fund of such city or county. Such tax shall be added to the
1001 rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter,
1002 and all amendments thereof, and the rules and regulations published with respect thereto, ~~except that the~~
1003 ~~applicable brackets of prices shall be as prescribed in § 58.1-628 for the combined state and local tax,~~
1004 ~~and except that no discount under § 58.1-622 shall be allowed on a local use tax.~~

1005 B. The council of any city and the governing body of any county desiring to impose a local use tax
1006 under this section may do so in the manner following:

1007 1. If the city or county has previously imposed the local sales tax authorized by § 58.1-605, the local
1008 use tax may be imposed by the council or governing body by the adoption of a resolution by a majority
1009 of all the members thereof, by a recorded ye and nay vote, stating its purpose and referring to this
1010 section, and providing that the local use tax shall become effective on the first day of a month at least
1011 sixty days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to
1012 the Tax Commissioner so that it will be received within five days after its adoption. The resolution
1013 authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision
1014 of law, including any charter provision.

1015 2. If the city or county has not imposed the local sales tax authorized by § 58.1-605, the local use
1016 tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections
1017 B and C of § 58.1-605.

1018 C. Any local use tax levied under this section shall be administered and collected by the Tax
1019 Commissioner in the same manner and subject to the same penalties as provided for the state use tax;
1020 ~~with the adjustments required by § 58.1-628.~~

1021 D. The local use tax authorized by this section shall not apply to transactions to which the sales tax
1022 applies, the situs of which for state and local sales tax purposes is the city or county of location of each
1023 place of business of every dealer paying the tax to the Commonwealth without regard to the city or
1024 county of possible use by the purchasers. However, the local use tax authorized by this section shall
1025 apply to tangible personal property purchased without this Commonwealth for use or consumption
1026 within the city or county imposing the local use tax, or stored within the city or county for use or
1027 consumption, where the property would have been subject to the sales tax if it had been purchased
1028 within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal
1029 property where the place of business of the lessor is without this Commonwealth and such leases or
1030 rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state
1031 use tax applies.

1032 E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers
1033 for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly
1034 use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by
1035 cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is
1036 unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible
1037 personal property involved shall be remitted to the Commonwealth by such dealer without attempting to
1038 assign the shipment to any city or county.

1039 F. Local use tax revenue shall be distributed among the cities and counties for which it is collected,
1040 respectively, as shown by the records of the Department, and the procedure shall be the same as that
1041 prescribed for distribution of local sales tax revenue under § 58.1-605. The local use tax revenue that is
1042 not accurately assignable to a particular city or county shall be distributed monthly by the appropriate
1043 state authorities among the cities and counties in this Commonwealth imposing the local use tax upon

1044 the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax
 1045 was in effect in the taxable month involved, as shown by the records of the Department, and computed
 1046 with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed
 1047 among such cities and counties, respectively, in the month of distribution. Notwithstanding any other
 1048 provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use
 1049 tax. Any significant changes to the method of local use tax distribution shall be phased in over a
 1050 five-year period. Distribution information shall be shared with the affected localities prior to
 1051 implementation of the changes.

1052 G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as
 1053 provided in § 58.1-605 with respect to local sales tax revenue.

1054 § 58.1-609.3. Commercial and industrial exemptions.

1055 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606
 1056 shall not apply to the following:

1057 1. Personal property purchased by a contractor which is used solely in another state or in a foreign
 1058 country, which could be purchased by such contractor for such use free from sales tax in such other
 1059 state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or
 1060 country.

1061 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of
 1062 tangible personal property for resale where such industrial materials either enter into the production of or
 1063 become a component part of the finished product; (ii) industrial materials that are coated upon or
 1064 impregnated into the product at any stage of its being processed, manufactured, refined, or converted for
 1065 resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or
 1066 supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or
 1067 resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging
 1068 tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to
 1069 produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or
 1070 for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or
 1071 replacements thereof, shall be exempt if the preponderance of their use is directly in processing,
 1072 manufacturing, refining, mining or converting products for sale or resale. The provisions of this
 1073 subsection do not apply to the drilling, extraction, refining, or processing of oil, gas, natural gas and
 1074 coalbed methane gas. *In addition, the exemption provided herein shall not be applicable to any*
 1075 *machinery, tools, and equipment, or any other tangible personal property used by a public service*
 1076 *corporation in the generation of electric power, except for raw materials that are inputs to production*
 1077 *of electricity, including fuel.*

1078 3. Tangible personal property sold or leased to ~~(i)~~ a public service corporation ~~subject to a state~~
 1079 ~~franchise or license tax upon gross receipts;~~ ~~(ii) a telecommunications company as defined in~~
 1080 ~~§ 58.1-400.1 or (iii) a telephone company chartered in the Commonwealth which is exclusively a local~~
 1081 ~~mutual association and is not designated to accumulate profits for the benefit of, or to pay dividends to,~~
 1082 ~~the stockholders or members thereof, for use or consumption by such corporation, company, person or~~
 1083 ~~mutual association directly in the rendition of its public service; and tangible personal property sold or~~
 1084 ~~leased to a public service corporation engaged in business as a common carrier of property or~~
 1085 ~~passengers by motor vehicle or railway, for use or consumption by such common carrier directly in the~~
 1086 ~~rendition of its public service.~~

1087 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in
 1088 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying
 1089 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states
 1090 of the United States or its territories or possessions, or in foreign commerce between ports in the
 1091 Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or
 1092 tangible personal property used directly in the building, conversion or repair of the ships or vessels
 1093 covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant
 1094 vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used
 1095 exclusively or principally in interstate or foreign commerce.

1096 5. Tangible personal property purchased for use or consumption directly and exclusively in basic
 1097 research or research and development in the experimental or laboratory sense.

1098 6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign
 1099 commerce as a common carrier providing scheduled air service on a continuing basis to one or more
 1100 Virginia airports at least one day per week, for use or consumption by such airline directly in the
 1101 rendition of its common carrier service.

1102 7. Meals furnished by restaurants or food service operators to employees as a part of wages.

1103 8. Tangible personal property including machinery and tools, repair parts or replacements thereof,
 1104 and supplies and materials used directly in maintaining and preparing textile products for rental or
 1105 leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile

1106 products.

1107 9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any
1108 equipment that has not been certified to the Department of Taxation by a state certifying authority
1109 pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified
1110 pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such
1111 section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas
1112 production, including gas, natural gas, and coalbed methane gas.

1113 10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption
1114 directly in the rendition of their services.

1115 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
1116 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
1117 photocopying of products for sale or resale.

1118 12. From July 1, 1994, and ending July 1, 2006, raw materials, fuel, power, energy, supplies,
1119 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,
1120 extraction, refining, or processing of natural gas or oil and the reclamation of the well area. For the
1121 purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane
1122 gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," "refining," and
1123 "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw
1124 natural gas into a usable condition consistent with commercial practices, and the gathering and
1125 transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition.
1126 Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the
1127 preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or
1128 oil for sale or resale, or in well area reclamation activities required by state or federal law.

1129 13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or
1130 distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or
1131 space station of any kind possessing space flight capability, including the components thereof,
1132 irrespective of whether such facility, system, vehicle, satellite, or station is returned to this
1133 Commonwealth for subsequent use, storage or consumption in any manner when used to conduct
1134 spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal
1135 property placed on or used aboard any orbital or suborbital space facility, space propulsion system,
1136 space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal
1137 property is returned to this Commonwealth for subsequent use, storage or consumption in any manner
1138 when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary
1139 vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport
1140 activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment
1141 purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and
1142 services provided to operate and maintain launch facilities, launch equipment, payload processing
1143 facilities and payload processing equipment used to conduct spaceport activities.

1144 For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a
1145 facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

1146 The exemptions provided by this subdivision shall not be denied by reason of a failure,
1147 postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion
1148 system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or
1149 any components thereof.

1150 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption.

1151 A. Subject to the conditions of subsections D and E, the *The* tax imposed by §§ 58.1-603 and
1152 58.1-604 on food purchased for human consumption shall be levied and distributed as follows:

1153 1. From January 1, 2000, through ~~March 31, 2001~~ *midnight on June 30, 2005*, the tax rate on such
1154 food shall be three percent of the gross sales price. The revenue from the tax shall be distributed as
1155 follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in
1156 subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed
1157 as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of
1158 one and one-half percent shall be used for general fund purposes.

1159 2. From ~~April 1, 2001, through March 31, 2002~~, *July 1, 2005, through midnight on June 30, 2006*,
1160 the tax rate on such food shall be two and one-half percent of the gross sales price. The revenue from
1161 the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall
1162 be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one
1163 percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue
1164 from the tax at the rate of one percent shall be used for general fund purposes.

1165 3. From ~~April 1, 2002, through March 31, 2003~~, *July 1, 2006, through midnight on June 30, 2007*,
1166 the tax rate on such food shall be two percent of the gross sales price. The revenue from the tax shall

1167 be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed
 1168 as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall
 1169 be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at
 1170 the rate of one-half percent shall be used for general fund purposes.

1171 4. On and after ~~April 1, 2003~~ *July 1, 2007*, the tax rate on such food shall be one and one-half
 1172 percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue
 1173 from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
 1174 § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
 1175 subsections B, C and D of § 58.1-638.

1176 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
 1177 consumption pursuant to §§ 58.1-605 and 58.1-606.

1178 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
 1179 defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted
 1180 pursuant to that Act, except it shall not include seeds and plants which produce food for human
 1181 consumption. For the purpose of this section, "food purchased for human consumption" shall not include
 1182 food sold by any retail establishment where the gross receipts derived from the sale of food prepared by
 1183 such retail establishment for immediate consumption on or off the premises of the retail establishment
 1184 constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not
 1185 limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises
 1186 of that retail establishment. For purposes of this section, "retail establishment" means each place of
 1187 business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a
 1188 certificate of registration pursuant to § 58.1-613.

1189 D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased
 1190 for human consumption for any 12-month period beginning on or after April 1, 2001, shall not be
 1191 reduced below the rate then in effect for the Commonwealth's current fiscal year if:

1192 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction
 1193 is contemplated in subsection A do not exceed the official general fund revenue estimates for such
 1194 preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act,
 1195 by at least one percent; or

1196 2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have
 1197 occurred during the then current fiscal year.

1198 E. If the tax rate on food purchased for human consumption remains the same for the period January
 1199 1, 2000, through March 31, 2001, and the subsequent 12-month period beginning on April 1, 2001, or
 1200 with respect to any consecutive 12-month periods beginning on and after April 1, 2001, the tax rate on
 1201 such food shall remain the same unless none of the conditions described in subsection D have occurred,
 1202 in which event the tax rate on food purchased for human consumption for the immediately following
 1203 12-month period shall be equal to the next lowest tax rate listed in subsection A.

1204 § 58.1-614. Vending machine sales.

1205 A. Notwithstanding the provisions of §§ 58.1-603 and 58.1-604, whenever a dealer makes sales of
 1206 tangible personal property through vending machines, or in any other manner making collection of the
 1207 tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his
 1208 wholesale purchases for sale at retail from vending machines and shall be required to remit an amount
 1209 based on four and one-half percent *through midnight on July 31, 2004, and four percent beginning on*
 1210 *and after August 1, 2004*, of such wholesale purchases.

1211 B. Notwithstanding the provisions of §§ 58.1-605 and 58.1-606, dealers making sales of tangible
 1212 personal property through vending machines shall report and remit the one percent local sales and use
 1213 tax computed as provided in subsection A of this section.

1214 C. The provisions of subsections A and B of this section shall not be applicable to vending machine
 1215 operators all of whose machines are under contract to nonprofit organizations. Such operators shall
 1216 report only the gross receipts from machines selling items for more than ~~ten~~10 cents and shall be
 1217 required to remit an amount based on a percentage of their remaining gross sales established by the Tax
 1218 Commissioner to take into account the inclusion of sales tax.

1219 D. Notwithstanding any other provisions in this section ~~or § 58.1-628~~, when the Tax Commissioner
 1220 determines that it is impractical to collect the tax in the manner provided by those sections, such dealer
 1221 shall be required to remit an amount based on a percentage of gross receipts which takes into account
 1222 the inclusion of the sales tax.

1223 E. The provisions of this section shall not be applicable to any dealer who fails to maintain records
 1224 satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through
 1225 vending machines shall obtain a certificate of registration under § 58.1-613 in relevant form for each
 1226 county or city in which he has machines.

1227 § 58.1-626. Absorption of tax prohibited.

1228 No person shall advertise or hold out to the public, directly or indirectly, that he will absorb all or

1229 any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment
1230 of all or any part of such tax; ~~except as may be authorized under § 58.1-627 or § 58.1-628~~. Any person
1231 who violates this section shall be guilty of a Class 2 misdemeanor.

1232 § 58.1-628.2. *Adjustment to the rate of tax imposed under this chapter.*

1233 *If a dealer can show to the satisfaction of the Tax Commissioner that more than 85 percent of the*
1234 *total dollar volume of his gross taxable sales during the taxable month was from individual sales at*
1235 *prices of 10 cents or less each and that he was unable to adjust his prices in such manner as to prevent*
1236 *the economic incidence of the sales tax from falling on him, the Tax Commissioner shall determine the*
1237 *proper tax liability of the dealer based on that portion of the dealer's gross taxable sales that was from*
1238 *sales at prices of 11 cents or more.*

1239 § 58.1-638. Disposition of state sales and use tax revenue; localities' share; Game Protection Fund.

1240 A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax
1241 revenue collected under the preceding sections of this chapter.

1242 1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted
1243 by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided
1244 in this section, to the Transportation Trust Fund as defined in § 33.1-23.03:1. Of the funds paid to the
1245 Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port
1246 Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth
1247 Airport Fund as provided in this section; and an aggregate of 14.5 percent in fiscal year 1998-1999 and
1248 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass
1249 Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an
1250 estimate of the net revenue to be received into the state treasury each month, and such estimated
1251 payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall
1252 be made to the Fund on the last day of each month.

1253 2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
1254 be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

1255 a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds
1256 remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in
1257 the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be
1258 paid to any authority, locality or commission for the purposes hereinafter specified.

1259 b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth
1260 Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to
1261 support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary
1262 ports within the Commonwealth.

1263 c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the
1264 Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the
1265 ports of Virginia, including but not limited to the ports of Richmond, Hopewell and Alexandria.

1266 3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
1267 be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund.
1268 The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds
1269 remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in
1270 the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be
1271 allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall
1272 be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the
1273 Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access
1274 for the purposes enumerated in § 5.1-2.16, or is owned or leased by the Metropolitan Washington
1275 Airports Authority (MWAA), as follows:

1276 Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation
1277 Board from the Commonwealth Transportation Fund, shall be allocated as follows: sixty percent to
1278 MWAA, up to a maximum annual amount of two million dollars, and forty percent to air carrier airports
1279 as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air
1280 carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a
1281 than it received in fiscal year 1994-1995.

1282 Of the remaining amount:

1283 a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased
1284 by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air
1285 carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however,
1286 shall receive less than \$50,000 nor more than \$2 million per year from this provision.

1287 b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever
1288 airports on a discretionary basis, except airports owned or leased by MWAA.

1289 c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports

1290 on a discretionary basis.

1291 4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall
1292 be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass
1293 Transit Fund.

1294 a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and
1295 any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but
1296 shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be
1297 paid to any local governing body, transportation district commission, or public service corporation for
1298 the purposes hereinafter specified.

1299 b. The amounts allocated pursuant to this section shall be used to support the public transportation
1300 administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and
1301 maintenance parts and supplies for public transportation at a state share of eighty percent in 2002 and
1302 ninety-five percent in 2003 and succeeding years. These amounts may be used to support up to
1303 ninety-five percent of the local or nonfederal share of capital project costs for public transportation and
1304 ridesharing equipment, facilities, and associated costs. Capital costs may include debt service payments
1305 on local or agency transit bonds. The term "borne by the locality" means the local share eligible for
1306 state assistance consisting of costs in excess of the sum of fares and other operating revenues plus
1307 federal assistance received by the locality.

1308 c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth
1309 Transportation Board as follows:

1310 (1) Funds for special programs, which shall include ridesharing, experimental transit, and technical
1311 assistance, shall not exceed 1.5 percent of the Fund.

1312 (2) The Board may allocate these funds to any locality or planning district commission to finance up
1313 to eighty percent of the local share of all costs associated with the development, implementation, and
1314 continuation of ridesharing programs.

1315 (3) Funds allocated for experimental transit projects may be paid to any local governing body,
1316 transportation district commission, or public corporation or may be used directly by the Department of
1317 Rail and Public Transportation for the following purposes:

1318 (a) To finance up to ninety-five percent of the capital costs related to the development,
1319 implementation and promotion of experimental public transportation and ridesharing projects approved
1320 by the Board.

1321 (b) To finance up to ninety-five percent of the operating costs of experimental mass transportation
1322 and ridesharing projects approved by the Board for a period of time not to exceed twelve months.

1323 (c) To finance up to ninety-five percent of the cost of the development and implementation of any
1324 other project designated by the Board where the purpose of such project is to enhance the provision and
1325 use of public transportation services.

1326 d. Funds allocated for public transportation promotion and operation studies may be paid to any local
1327 governing body, planning district commission, transportation district commission, or public transit
1328 corporation, or may be used directly by the Department of Rail and Public Transportation for the
1329 following purposes and aid of public transportation services:

1330 (1) At the approval of the Board to finance a program administered by the Department of Rail and
1331 Public Transportation designed to promote the use of public transportation and ridesharing throughout
1332 Virginia.

1333 (2) To finance up to fifty percent of the local share of public transportation operations planning and
1334 technical study projects approved by the Board.

1335 e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same
1336 proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for
1337 the purposes specified in subdivision 4 b.

1338 f. The remaining twenty-five percent shall be distributed for capital purposes on the basis of
1339 ninety-five percent of the nonfederal share for federal projects and ninety-five percent of the total costs
1340 for nonfederal projects. In the event that total capital funds available under this subdivision are
1341 insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit
1342 property in the same proportion that such capital expenditure bears to the statewide total of capital
1343 projects.

1344 g. There is hereby created in the Department of the Treasury a special nonreverting fund known as
1345 the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the
1346 Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be
1347 established on the books of the Comptroller and consist of such moneys as are appropriated to it by the
1348 General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given,
1349 bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds
1350 remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the
1351 general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds

1352 within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth
 1353 Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political
 1354 subdivision, another public entity created by an act of the General Assembly, or a private entity as
 1355 defined in § 56-557 and for purposes as enumerated in subdivision 4c of § 33.1-269 or expended by the
 1356 Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of
 1357 the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the
 1358 establishment, improvement, or expansion of public transportation services through specific projects
 1359 approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit
 1360 Capital Fund shall receive local, regional or private funding for at least twenty percent of the nonfederal
 1361 share of the total project cost.

1362 5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the
 1363 Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of
 1364 Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

1365 a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality
 1366 using WMATA's capital formula shall be paid first by NVTC. NVTC shall use ninety-five percent state
 1367 aid for these payments.

1368 b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the
 1369 related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall
 1370 include twenty percent of annual local bus capital expenses. Hold harmless protections and obligations
 1371 for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

1372 Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and
 1373 reliable source of revenue as defined by Public Law 96-184.

1374 B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed
 1375 among the counties and cities of this Commonwealth in the manner provided in subsections C and D.

1376 C. The localities' share of the net revenue distributable under this section among the counties and
 1377 cities shall be apportioned by the Comptroller and distributed among them by warrants of the
 1378 Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month
 1379 during which the net revenue was received into the state treasury. The distribution of the localities' share
 1380 of such net revenue shall be computed with respect to the net revenue received into the state treasury
 1381 during each month, and such distribution shall be made as soon as practicable after the close of each
 1382 such month.

1383 D. The net revenue so distributable among the counties and cities shall be apportioned and
 1384 distributed upon the basis as certified to the Comptroller by the Department of Education, of the number
 1385 of children in each county and city according to the most recent statewide census of school population
 1386 taken by the Department of Education pursuant to § 22.1-284, as adjusted in the manner hereinafter
 1387 provided. No special school population census, other than a statewide census, shall be used as the basis
 1388 of apportionment and distribution except that in any calendar year in which a statewide census is not
 1389 reported, the Department of Education shall adjust such school population figures by the same percent of
 1390 annual change in total population estimated for each locality by The Center for Public Service. The
 1391 revenue so apportionable and distributable is hereby appropriated to the several counties and cities for
 1392 maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the
 1393 operation of the public schools, which shall be considered as funds raised from local resources. In any
 1394 county, however, wherein is situated any incorporated town constituting a school division, the county
 1395 treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest
 1396 payments, or other expenses incurred in the operation of the public schools, the proper proportionate
 1397 amount received by him in the ratio that the school population of such town bears to the school
 1398 population of the entire county. If the school population of any city or of any town constituting a school
 1399 division is increased by the annexation of territory since the last preceding school population census,
 1400 such increase shall, for the purposes of this section, be added to the school population of such city or
 1401 town as shown by the last such census and a proper reduction made in the school population of the
 1402 county or counties from which the annexed territory was acquired.

1403 E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a
 1404 two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of
 1405 hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment,
 1406 wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the
 1407 most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of
 1408 Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated
 1409 Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used,
 1410 in part, to defray the cost of law enforcement. Not later than ~~thirty~~30 days after the close of each
 1411 quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of
 1412 collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund,

1413 established under § 29.1-101.1, is equal to or in excess of \$35 million, any portion of sales and use tax
 1414 revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in
 1415 excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the
 1416 Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time
 1417 as the balance in the Capital Improvement Fund is less than \$35 million.

1418 *F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales*
 1419 *and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the*
 1420 *General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the*
 1421 *Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under*
 1422 *§ 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent*
 1423 *increase as provided in this subdivision. The transfers to the Public Education Standards of*
 1424 *Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the*
 1425 *net revenue generated (and collected in the succeeding month) from such one-half percent increase for*
 1426 *the month of August 2004 and for each month thereafter.*

1427 *2. For the purposes of the Comptroller making the required transfers under subdivision 1, the Tax*
 1428 *Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each*
 1429 *month certifying the sales and use tax revenues generated in the preceding month. Within three calendar*
 1430 *days of receiving such certification, the Comptroller shall make the required transfers to the Public*
 1431 *Education Standards of Quality/Local Real Estate Property Tax Relief Fund.*

1432 *FG. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be*
 1433 *corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.*

1434 *GH. The term "net revenue," as used in this section, means the gross revenue received into the*
 1435 *general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this*
 1436 *chapter, less refunds to taxpayers.*

1437 *§ 58.1-638.1. Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund*
 1438 *established.*

1439 *There is hereby created in the state treasury a special permanent, nonreverting, interest-bearing fund*
 1440 *to be known as the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund,*
 1441 *hereinafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller.*
 1442 *The Fund shall consist of (i) any sales and use tax revenues transferred pursuant to subsection F of*
 1443 *§ 58.1-638; (ii) any other moneys appropriated to it by the General Assembly; and (iii) such other sums*
 1444 *as may be made available to it from any other source, public or private, all of which shall be credited*
 1445 *to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal*
 1446 *year shall remain in the Fund and shall not revert to the general fund.*

1447 *All amounts credited to the Fund shall be paid to localities in accordance with the general*
 1448 *appropriation act to meet the Commonwealth's responsibility for the Standards of Quality prescribed*
 1449 *pursuant to Article VIII, Section 2 of the Constitution of Virginia. Any amount paid to a county, city, or*
 1450 *town from the Fund shall be taken into account by the governing body of the county, city, or town in*
 1451 *setting real estate tax rates.*

1452 *§ 58.1-639. Transitional provisions.*

1453 *A. To the extent of ~~any~~ the one-half percent increase in the state sales and use tax rate effective*
 1454 *August 1, 2004, enacted by the ~~1986 Special~~ 2004 Special Session I of the Virginia General Assembly,*
 1455 *the Tax Commissioner, upon application of the purchaser in accordance with regulations promulgated by*
 1456 *the Commissioner, shall have the authority to refund state sales or use taxes paid on purchases of*
 1457 *tangible personal property made pursuant to bona fide real estate construction contracts, contracts for the*
 1458 *sale of tangible personal property, and leases, provided that the real estate construction contract, contract*
 1459 *for the sale of tangible personal property or lease is entered into prior to the date of enactment of ~~the~~*
 1460 *such increase of in the state sales and use tax rate; and further provided that the date of delivery of the*
 1461 *tangible personal property is on or before ~~March 30, 1987~~ October 31, 2004. The term "bona fide*
 1462 *contract," when used in this section in relation to real estate construction contracts, shall include but not*
 1463 *be limited to those contracts which are entered into prior to the enactment of ~~the~~ such increase in the*
 1464 *state sales and use tax rate, provided that such contracts include plans and specifications.*

1465 *B. Notwithstanding the foregoing ~~March 30, 1987~~ October 31, 2004, delivery date requirement, with*
 1466 *respect to bona fide real estate construction contracts which contain a specific and stated date of*
 1467 *completion, the date of delivery of such tangible personal property shall be on or before the completion*
 1468 *date of the applicable project.*

1469 *C. Applications for refunds pursuant to this section shall be made in accordance with the provisions*
 1470 *of § 58.1-1823. Interest computed in accordance with § 58.1-1833 shall be added to the tax refunded*
 1471 *pursuant to this section.*

1472 *§ 58.1-801. Deeds generally; charter amendments.*

1473 *A. On every deed admitted to record, except a deed exempt from taxation by law, there is hereby*
 1474 *levied a state recordation tax. The rate of the tax shall be ~~fifteen~~ 25 cents on every \$100 or fraction*

1475 thereof of the consideration of the deed or the actual value of the property conveyed, whichever is
1476 greater.

1477 Upon deeds conveying property lying partly within the Commonwealth and partly without the
1478 Commonwealth, the tax herein imposed shall apply only to the value of so much of the property
1479 conveyed as is situated within the Commonwealth.

1480 B. When the charter of a corporation is amended, and the only effect of such amendment is to
1481 change the corporate name of such corporation, the tax upon the recordation of a deed conveying to, or
1482 vesting in, such corporation under its changed name, the title to any or all of the real or personal
1483 property of such corporation held in its name as it existed immediately prior to such amendment, shall
1484 be ~~fifty~~ 50 cents.

1485 § 58.1-803. Deeds of trust or mortgages; maximum tax.

1486 A. A recordation tax on deeds of trust or mortgages is hereby imposed at a rate of ~~15¢~~ 25 cents on
1487 every \$100 or portion thereof of the amount of bonds or other obligations secured thereby. In the event
1488 of an open or revolving deed of trust, the amount of the obligation for purposes of this section shall be
1489 the maximum amount which may be outstanding at any one time. In any case in which the amount
1490 which may be secured under a deed of trust or mortgage is not ascertainable, the tax shall be based
1491 upon the fair market value of the property conveyed, determined as of the date of the deed of trust or
1492 mortgage. The fair market value of the property shall include the value of any realty required by the
1493 terms of the deed of trust or mortgage to be constructed thereon.

1494 B. On deeds of trust or mortgages upon the works and property of a railroad lying partly within the
1495 Commonwealth and partly without the Commonwealth, the tax shall be only upon such proportion of
1496 the amount of bonds, or other obligations secured thereby, as the number of miles of the line of such
1497 company in the Commonwealth bears to the whole number of miles of the line of such company
1498 conveyed by such deed of trust or mortgage.

1499 Upon deeds of trust or mortgages conveying other property lying partly within the Commonwealth
1500 and partly without the Commonwealth the tax herein imposed shall be only upon such proportion of the
1501 debt secured as the value of the property located within the Commonwealth, or which may be brought
1502 into the Commonwealth, bears to the entire amount of property conveyed by such deed of trust or
1503 mortgage.

1504 C. On deeds of trust or mortgages, which provide for an initial issue of bonds, to be followed
1505 thereafter by additional bonds, unlimited in amount, if such deed of trust or mortgage provides that as
1506 and when such additional bonds are issued a supplemental indenture shall be recorded in the office in
1507 which the original deed of trust or mortgage is first recorded, which supplement shall contain a
1508 statement as to the amount of the additional bonds to be issued, then the tax shall be paid upon the
1509 initial amount of bonds when the original deed of trust is recorded and thereafter on each additional
1510 amount of bonds when the supplemental indenture relating to such additional bonds is recorded.

1511 On deeds of trust or mortgages which are supplemental to or wrap around existing deeds of trust on
1512 which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the
1513 face amount of the bond or obligation secured thereby which is in addition to the amount of the existing
1514 debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the
1515 amount of the existing debt.

1516 D. On deeds of trust or mortgages, the purpose of which is to refinance or modify the terms of an
1517 existing debt with the same lender, which debt is secured by a deed of trust or mortgage on which the
1518 tax imposed hereunder has been paid, the tax shall be paid only on that portion of the amount of the
1519 bond or other obligation secured thereby which is in addition to the amount of the original debt secured
1520 by a deed of trust or mortgage on which the tax has been paid. The instrument shall certify the amount
1521 of original debt.

1522 E. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture
1523 supplemental thereto shall be determined in accordance with the following schedule:

1524 On the first \$10 million ~~dollars~~ of value as determined pursuant to this section, ~~15¢~~ 25 cents upon
1525 every \$100 or portion thereof;

1526 On the next \$10 million ~~dollars~~ of value as determined pursuant to this section, ~~12¢~~ 22 cents upon
1527 every \$100 or portion thereof;

1528 On the next \$10 million ~~dollars~~ of value as determined pursuant to this section, ~~9¢~~ 19 cents upon
1529 every \$100 or portion thereof;

1530 On the next \$10 million ~~dollars~~ of value as determined pursuant to this section, ~~6¢~~ 16 cents upon
1531 every \$100 or portion thereof; and

1532 On all over \$40 million ~~dollars~~ of value as determined pursuant to this section, ~~3¢~~ 13 cents upon
1533 every \$100 or portion thereof, incorporated into this section.

1534 § 58.1-807. Contracts generally; leases.

1535 A. Except as hereinafter provided, on every contract or memorandum thereof relating to real or

1536 personal property admitted to record, a recordation tax is hereby levied at the rate of ~~fifteen~~ 25 cents on
 1537 every \$100 or fraction thereof of the consideration or value contracted for.

1538 B. The recordation of a deed of lease for a term of years, or assignment of the lessee's interest
 1539 therein, or memorandum thereof, shall be taxed according to the provisions of this section, unless
 1540 provided otherwise in § 58.1-809 or unless the annual rental, multiplied by the term for which the lease
 1541 runs, or remainder thereof, equals or exceeds the actual value of the property leased. In such cases the
 1542 tax for recording the deed of lease shall be based upon the actual value of the property at the date of
 1543 lease, including the value of any realty required by the terms of the lease to be constructed thereon by
 1544 the lessor.

1545 C. The recordation of an assignment of the lessor's interest in a lease, or memorandum thereof, shall
 1546 be taxed according to the provisions of this section, unless the assignment of the lessor's interest in the
 1547 lease is to provide additional security for an obligation of the lessor on which the tax has been
 1548 previously paid, or the assignment of the lessor's interest is made to the person who owns the property
 1549 which is subject to the lease. In such cases there shall be no tax for recording the lessor's assignment of
 1550 the lease.

1551 D. Notwithstanding the other provisions of this section, the tax on the recordation of leases of oil
 1552 and gas rights shall not exceed ~~twenty-five dollars~~ \$25. The tax on the recordation of leases of coal and
 1553 other mineral rights shall not exceed ~~fifty dollars~~ \$50.

1554 E. Notwithstanding the other provisions of this section, the tax on the recordation of leases of
 1555 outdoor advertising signs owned by a person engaged in the business of outdoor advertising licensed by
 1556 the Virginia Department of Transportation pursuant to § 33.1-361 shall not exceed ~~twenty-five~~
 1557 ~~dollars~~ \$25.

1558 § 58.1-808. Sales contracts for the sale of rolling stock or equipment.

1559 On every contract or agreement admitted to record relating to the sale of rolling stock or equipment,
 1560 whether the title is reserved in the vendor or not, with a railroad corporation or other corporation or
 1561 with a person, firm or company, the tax shall be ~~15¢~~ 25 cents on every \$100 or fraction thereof of the
 1562 amount contracted for in such contract or agreement. When such contract or agreement is with a railroad
 1563 corporation lying partly within the Commonwealth and partly without the Commonwealth, the tax shall
 1564 be upon such proportion of the amount contracted for as the number of miles of the line of such
 1565 railroad corporation in the Commonwealth bears to the whole number of miles of line of such railroad
 1566 corporation.

1567 § 58.1-1001. Tax levied; rate.

1568 In addition to all other taxes now imposed by law, every person within this Commonwealth who
 1569 sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of
 1570 distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of
 1571 one and one-quarter mills on each such cigarette *sold, stored or received before August 1, 2004; an*
 1572 *excise tax of one cent on each such cigarette sold, stored or received on and after August 1, 2004,*
 1573 *through midnight on June 30, 2005; and an excise tax of 1.5 cents on each such cigarette sold, stored*
 1574 *or received on and after July 1, 2005.*

1575 *The revenues generated by the tax imposed under this section on and after August 1, 2004, shall be*
 1576 *collected by the Department and deposited into the Virginia Health Care Fund established under*
 1577 *§ 32.1-366.*

1578 § 58.1-1009. Preparation, design and sale of stamps; unlawful sale or purchase of stamps a felony;
 1579 penalty.

1580 A. The Department is hereby authorized and directed to have prepared and to sell stamps suitable for
 1581 denoting the tax on all cigarettes. The Department shall design, adopt and promulgate the form and kind
 1582 of stamps to be used. Stamps so adopted and promulgated shall be known as and termed "Virginia
 1583 revenue stamps," and in any information or indictment, it shall be sufficient to describe the stamps as
 1584 "Virginia revenue stamps."

1585 Any person other than the Department who sells such revenue stamps, not affixed to cigarettes sold
 1586 and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a Class 6
 1587 felony. Any person who purchases revenue stamps from anyone other than the Department, unless such
 1588 stamps are already affixed to cigarettes being purchased by and delivered to him, or who uses or affixes,
 1589 or causes to be used or affixed, any revenue stamps not purchased from the Department by the owner of
 1590 the cigarettes being handled or stamped, whether such stamps are genuine or counterfeit, shall be guilty
 1591 of a Class 6 felony. When wholesalers have qualified as such with the Department, as provided in
 1592 § 58.1-1011, and purchase stamps as prescribed herein for use on taxable cigarettes sold and delivered
 1593 by them, the Department shall allow on such sales of revenue stamps a discount of two and one-half
 1594 cents per carton. ~~In addition to any other penalties provided by law, the Department may revoke the~~
 1595 ~~permit issued, in accordance with § 58.1-1011, to any person who violates this section.~~

1596 As used herein "carton" shall mean ten packs of cigarettes, each containing twenty cigarettes. All
 1597 stamps prescribed by the Department shall be designed and furnished in such a fashion as to permit

1598 identification of the wholesale dealer or retail dealer that affixed the stamp to the particular package of
 1599 cigarettes, by means of a serial number or other mark on the stamp. The Department shall maintain for
 1600 not less than three years information identifying which wholesale dealer or retail dealer affixed the
 1601 revenue stamp to each package of cigarettes.

1602 *B. 1. The Department shall provide Virginia revenue stamps to certain wholesale dealers holding a*
 1603 *current permit issued pursuant to § 58.1-1011 prior to collecting the tax imposed under this chapter*
 1604 *from such wholesale dealer. Such wholesale dealers shall be allowed to obtain the stamps from the*
 1605 *Department without concurrent payment of the tax only if the conditions of this subsection are satisfied.*

1606 *In order to obtain Virginia revenue stamps without concurrent payment of the tax imposed under this*
 1607 *chapter, a wholesale dealer shall (i) file a bond with a corporate surety licensed to do business in*
 1608 *Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank*
 1609 *or savings institution, the form and substance, and payable to the Commonwealth in the face amount of*
 1610 *approximately two times the anticipated average monthly amount in purchases of Virginia revenue*
 1611 *stamps by the wholesale dealer as determined by the Commissioner. The letter of credit shall be from a*
 1612 *bank incorporated or authorized to conduct banking business under the laws of the Commonwealth or*
 1613 *authorized to do business in the Commonwealth under the banking laws of the United States, or a*
 1614 *federally insured savings institution located in the Commonwealth. Such bond or irrevocable letter of*
 1615 *credit shall be conditioned upon payment of the tax imposed by this chapter relating to Virginia revenue*
 1616 *stamps obtained by the wholesale dealer from the Department (without concurrent payment of the tax)*
 1617 *for which such tax, net of any applicable discount described in subsection A, shall be paid within the 30*
 1618 *days immediately following the date that the related revenue stamp or stamps were provided by the*
 1619 *Department to such wholesale dealer. Any such bond shall be so written that, on timely payment of the*
 1620 *premium thereon, it shall continue in force from year to year unless sooner terminated.*

1621 *2. Any surety on a bond filed by any wholesale dealer shall be released and discharged from any*
 1622 *and all liability to the Commonwealth accruing on such bond after the expiration of 60 days from the*
 1623 *date upon which such surety shall have lodged with the Commissioner written request to be released*
 1624 *and discharged. But such request shall not operate to relieve, release or discharge such surety from any*
 1625 *liability already accrued or which shall accrue before the expiration of such 60-day period. The*
 1626 *Commissioner shall, promptly on receipt of such notice, notify the wholesale dealer who furnished such*
 1627 *bond. Unless such dealer on or before the expiration of such 60 days' notice files with the*
 1628 *Commissioner a new bond or letter of credit that meets all the conditions described in subdivision 1, the*
 1629 *Commissioner shall forthwith require the wholesale dealer to pay the tax imposed under this chapter*
 1630 *concurrent with obtaining revenue stamps from the Department.*

1631 *In the event that liability upon the bond or letter of credit filed by the wholesale dealer with the*
 1632 *Commissioner shall be discharged or reduced, whether by judgment rendered, payment made or*
 1633 *otherwise, or if in the opinion of the Commissioner any surety on the bond becomes unsatisfactory or*
 1634 *unacceptable, then the Commissioner may require the filing of a new bond or letter of credit. Unless*
 1635 *such new bond or letter of credit meets all the conditions described in subdivision 1, the Commissioner*
 1636 *shall forthwith require the wholesale dealer to pay the tax imposed under this chapter concurrent with*
 1637 *obtaining revenue stamps from the Department.*

1638 *3. Notwithstanding any other provision in this subsection, the Tax Commissioner, for good cause,*
 1639 *shall require a wholesale dealer to pay the tax imposed under this chapter concurrent with obtaining*
 1640 *revenue stamps from the Department, regardless of whether or not such dealer has filed or agreed to*
 1641 *file the bond or letter of credit described in this subsection.*

1642 *C. In addition to any other penalties provided by law, the Department may revoke the permit issued,*
 1643 *in accordance with § 58.1-1011, to any person who violates any provision of this section.*

1644 *§ 58.1-1018. Tax imposed on storage, use or consumption of cigarettes; exemption of products on*
 1645 *which sales tax has been paid.*

1646 *An excise tax is hereby imposed on the storage, use or other consumption in this Commonwealth of*
 1647 *cigarettes purchased at retail in an amount equal to that set out in § 58.1-1001. Every person storing,*
 1648 *using or otherwise consuming in this Commonwealth cigarettes purchased at retail shall be liable for the*
 1649 *tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to this*
 1650 *Commonwealth; however, if such cigarettes have attached thereto the requisite stamps or if the excise*
 1651 *tax imposed by Article 1 (§ 58.1-1000 et seq.) has been paid by the seller of such cigarettes, then the*
 1652 *tax imposed by this article shall not be due.*

1653 *The revenues generated by the tax imposed under this section on and after August 1, 2004, shall be*
 1654 *collected by the Department and deposited into the Virginia Health Care Fund established under*
 1655 *§ 32.1-366.*

1656 *Article 2.1.*
 1657 *Tobacco Products Tax.*

1658 *§ 58.1-1021.01. Definitions.*

1659 As used in this article, unless the context clearly shows otherwise, the term or phrase:

1660 "Package" means any package, bag, box, can, or other container in which tobacco products are
1661 packaged and sold.

1662 "Purchase price" means the same as sales price but applies to the total price paid for tobacco
1663 products.

1664 "Retail dealer" means every person other than a wholesale dealer, as defined in this section, who
1665 sells or offers for sale any tobacco product.

1666 "Sales price" means the total amount for which tobacco products are sold, valued in money, whether
1667 paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the
1668 dealer, without any deduction therefrom on account of the cost of the property sold, the cost of
1669 materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not
1670 include any cash discount allowed and taken or finance charges, carrying charges, service charges or
1671 interest from credit extended on sales of tobacco products.

1672 "Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702 (a) of the Internal
1673 Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702 (m)
1674 of the Internal Revenue Code, and as such section may be amended; (iii) "pipe tobacco" as defined in
1675 § 5702 (n) of the Internal Revenue Code, and as such section may be amended; or (iv) "roll-your-own
1676 tobacco" as defined in § 5702 (o) of the Internal Revenue Code, and as such section may be amended.

1677 "Wholesale dealer" means persons who sell any tobacco product at wholesale to retail dealers, or
1678 who sell any tobacco product at wholesale to institutional, commercial or industrial users.

1679 § 58.1-1021.02. Tax on tobacco products.

1680 A. In addition to all other taxes now imposed by law, there is hereby imposed a tax on every
1681 wholesale dealer within the Commonwealth selling any tobacco product to a retail dealer located in the
1682 Commonwealth or selling any tobacco product to institutional, commercial or industrial users located in
1683 the Commonwealth. For purposes of such tax, chain store distribution centers or houses that distribute
1684 any tobacco product to their stores for sale at retail shall be deemed to be a wholesale dealer selling to
1685 a retail dealer.

1686 The tax shall be imposed at a rate of 10 percent of the sales price charged by the wholesale dealer
1687 for each such package of tobacco product sold to a retail dealer or institutional, commercial or
1688 industrial user. In any case where a chain store distribution center or house distributes any tobacco
1689 product to its stores, the tax shall be imposed on the purchase price paid by the chain store distribution
1690 center or house for each such package of tobacco product so distributed.

1691 B. In addition to all other taxes now imposed by law, there is hereby imposed a tax on every retail
1692 dealer within the Commonwealth purchasing any tobacco product from a wholesale dealer located
1693 outside the Commonwealth.

1694 The tax shall be imposed at a rate of 10 percent of the purchase price paid by the retail dealer for
1695 each such package of tobacco product purchased from a wholesale dealer located outside the
1696 Commonwealth.

1697 § 58.1-1021.03. Monthly return and payments of tax.

1698 A. Every wholesale dealer subject to the tax imposed under this article shall, beginning with the
1699 month of August 2005, file a monthly return no later than the tenth of each month on a form prescribed
1700 by the Department, covering the sale of tobacco products by such dealer, for which a tax is imposed
1701 pursuant to subsection A of 58.1-1021.02, during the preceding month. The return shall contain or be
1702 accompanied by such further information as the Department shall require. The wholesale dealer, at the
1703 time of filing the return, shall pay to the Department the tax imposed under subsection A of
1704 § 58.1-1021.02 on the sales price for each such package of tobacco product sold in the preceding
1705 month.

1706 B. Every retail dealer subject to the tax imposed under this article shall, beginning with the month of
1707 August 2005, file a monthly return no later than the tenth of each month on a form prescribed by the
1708 Department, covering the purchase of tobacco products by such dealer, for which a tax is imposed
1709 pursuant to subsection B of 58.1-1021.02, during the preceding month. The return shall contain or be
1710 accompanied by such further information as the Department shall require. The retail dealer, at the time
1711 of filing the return, shall pay to the Department the tax imposed under subsection B of § 58.1-1021.02
1712 on the purchase price for each such package of tobacco product purchased in the preceding month.

1713 § 58.1-1021.04. Failure to file return; fraudulent return; penalties; interest; overpayment of tax.

1714 A. When any wholesale dealer or retail dealer fails to make any return or pay the full amount of the
1715 tax required by this article, there shall be imposed a specific penalty to be added to the tax in the
1716 amount of five percent if the failure is for not more than one month, with an additional two percent for
1717 each additional month, or fraction thereof, during which the failure continues, not to exceed 20 percent
1718 in the aggregate. In no case, however, shall the penalty be less than \$10 and such minimum penalty
1719 shall apply whether or not any tax is due for the period for which such return was required. If such
1720 failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner,

1721 *such return with or without remittance may be accepted exclusive of penalties. In the case of a false or*
 1722 *fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this*
 1723 *article, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth*
 1724 *of any such tax, a specific penalty of 50 percent of the amount of the proper tax shall be assessed. All*
 1725 *penalties and interest imposed by this article shall be payable by the wholesale dealer or retail dealer*
 1726 *and collectible by the Department in the same manner as if they were a part of the tax imposed.*

1727 *B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this*
 1728 *article when any wholesale dealer or retail dealer reports his sales or purchases, as the case may be, at*
 1729 *50 percent or less of the actual amount.*

1730 *C. Interest at a rate determined in accordance with § 58.1-15 shall accrue on the tax until the same*
 1731 *is paid.*

1732 *No deficiency, interest or penalty shall be assessed for any month after the expiration of three years*
 1733 *from the date set for the filing of the return for such month, except in cases of fraud, or where no*
 1734 *return has been filed for such month.*

1735 *D. If the Tax Commissioner determines that the amount paid the Commonwealth under this article in*
 1736 *regard to any monthly return was greater than the amount of tax due the Commonwealth, the excess*
 1737 *may be taken as a credit by the wholesale dealer or retail dealer against a subsequent month's tax*
 1738 *imposed under this article. However, if such wholesale dealer or retail dealer requests a refund, such*
 1739 *excess shall be refunded to the dealer within 45 days of the request. The refund shall include interest at*
 1740 *the rate provided in § 58.1-15. Interest on such refunds shall accrue from the due date of the return to*
 1741 *which such excess is attributable to or the date such excess was paid to the Department, whichever is*
 1742 *later, and shall end on a date determined by the Department preceding the date of the refund check by*
 1743 *not more than seven days.*

1744 *§ 58.1-1021.05. Use of revenues.*

1745 *The revenues generated by the taxes imposed under this article shall be collected by the Department*
 1746 *and deposited into the Virginia Health Care Fund established under § 32.1-366.*

1747 *§ 58.1-1206. Deductions from gross capital.*

1748 *A. There shall be deducted from the gross capital otherwise ascertainable under § 58.1-1205:*

1749 *1. The assessed value of real estate if otherwise taxed in this Commonwealth which is owned by*
 1750 *such bank, or is used or occupied by such bank, if held in the name of a majority-owned subsidiary of*
 1751 *the bank or of a bank holding company which owns a majority of the capital stock of such bank or of*
 1752 *any wholly-owned subsidiary of the bank holding company which owns the majority of the capital stock*
 1753 *of such bank and the assessed value, up to the amount of the unencumbered equity, of real estate in the*
 1754 *nature of improvements which are owned by the bank, or used or occupied by the bank and held by a*
 1755 *majority-owned subsidiary or a bank holding company or a wholly-owned subsidiary of a bank holding*
 1756 *company, even if assessed in the name of some other person because of the ownership of the underlying*
 1757 *land by such person. Real estate used or occupied by a subsidiary or originally conveyed as collateral*
 1758 *for loans made by a subsidiary of the bank and reacquired upon foreclosure of mortgage loans will be*
 1759 *deemed to be used or occupied by the bank. The deduction for assessed value of real estate shall be the*
 1760 *most recent assessment made prior to January 1 of the current bank franchise tax year for real estate*
 1761 *owned by the bank or affiliate on January 1 of the current year.*

1762 *2. The book value of tangible personal property which shall be held for lease and is otherwise taxed*
 1763 *which is owned by such bank or in the name of a majority-owned subsidiary of the bank. If the bank*
 1764 *does not own all the stock of such subsidiary, it shall be entitled to deduct only such portion of the*
 1765 *assessed value of the real estate and the value of such tangible personal property as the common stock it*
 1766 *owns in such subsidiary bears to the whole issue of common stock of such corporation.*

1767 *3. An amount which shall equal the same percentage of the gross capital account, defined as its*
 1768 *capital, surplus and undivided profits as set forth in § 58.1-1205 at December 31 next preceding as the*
 1769 *obligations of the United States bear to the total assets of the bank. Such percentage of U.S. obligations*
 1770 *shall be determined as of the four most recent (or less in case of a new bank) Reports of Condition and*
 1771 *the percentage obtained shall be averaged. For purposes of computing such percentage, total assets shall*
 1772 *not include the goodwill described in subdivision 5. The obligations of the United States as used herein*
 1773 *shall include all obligations of the United States exempt from taxation under 31 U.S.C. § 3124, of the*
 1774 *United States Constitution or any other statute, or any instrumentality or agency of the United States*
 1775 *which obligations shall be exempt from state or local taxation under the United States Constitution or*
 1776 *any statute of the United States.*

1777 *4. The amount of retained earnings and surplus of subsidiaries to the extent included in the gross*
 1778 *capital of the bank. In addition, any portion of the amount added to federal taxable income pursuant to*
 1779 *subdivision B 9 of § 58.1-402 by a corporation that is for interest expenses and costs paid to the bank*
 1780 *for a loan or other obligation made by the bank to such corporation shall be deducted from the gross*
 1781 *capital of the bank provided that (i) at the time of payment of such portion to the bank, the bank was a*

1782 *related member of the corporation, and (ii) such portion has not otherwise been deducted from gross*
 1783 *capital. For purposes of this subdivision, the terms "interest expenses and costs" and "related member"*
 1784 *mean the same as those terms are defined in § 58.1-302.*

1785 5. Any amount equal to ninety percent of goodwill created in connection with any acquisition or
 1786 merger occurring on or after July 1, 2001.

1787 B. For purposes of this section, "goodwill" shall be determined using generally accepted accounting
 1788 principles.

1789 § 58.1-3833. County food and beverage tax.

1790 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human
 1791 consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed ~~eight~~
 1792 ~~and one-half percent, when added to the state and local general sales and use tax, four percent~~ of the
 1793 amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold
 1794 through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as
 1795 well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and
 1796 convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall
 1797 be subject to the tax, for that portion of the grocery store or convenience store selling such items.

1798 This tax shall be levied only if the tax is approved in a referendum within the county which shall be
 1799 held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on
 1800 the filing of a petition signed by a number of registered voters of the county equal in number to 10
 1801 percent of the number of voters registered in the county, as appropriate on January 1 of the year in
 1802 which the petition is filed with the court of such county. The clerk of the circuit court shall publish
 1803 notice of the election in a newspaper of general circulation in the county once a week for three
 1804 consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall
 1805 be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such
 1806 resolution of the board of supervisors or such petition states for what projects and/or purposes the
 1807 revenues collected from the tax are to be used, then the question on the ballot for the referendum shall
 1808 include language stating for what projects and/or purposes the revenues collected from the tax are to be
 1809 used.

1810 The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and
 1811 nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently
 1812 imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection
 1813 of such tax shall be in a manner prescribed by the governing body.

1814 B. Notwithstanding the provisions of subsection A of this section, any county with a population of at
 1815 least 70,000 but no more than 100,000, any county with a population of at least 17,910 but no more
 1816 than 18,000, any county with a population of at least 34,000 but no more than 34,400, and any county
 1817 having a county manager plan of government are hereby authorized to levy a tax on food and beverages
 1818 sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in
 1819 subsection A above and subject to the same exemptions, not to exceed four percent of the amount
 1820 charged for such food and beverages, provided that the governing body of the respective county holds a
 1821 public hearing before adopting a local food and beverage tax, and the governing body by unanimous
 1822 vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as
 1823 the governing body may by ordinance prescribe.

1824 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
 1825 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
 1826 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
 1827 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.
 1828 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
 1829 law shall constitute embezzlement pursuant to § 18.2-111.

1830 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
 1831 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

1832 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
 1833 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
 1834 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
 1835 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
 1836 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
 1837 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

1838 **2. That the provisions of this act amending §§ 58.1-302, 58.1-391, 58.1-392, 58.1-402, and 58.1-441**
 1839 **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**
 1840 **to the Code of Virginia shall apply for taxable years beginning on and after January 1, 2004. The**
 1841 **amendments to subdivision D 2 of § 58.1-322 of the Code of Virginia pursuant to the provisions of**
 1842 **this act shall apply for taxable years beginning on and after January 1, 2006.**

1843 **3. That the Tax Commissioner shall develop and publish guidelines for purposes of implementing**

1844 the amendments to the Commonwealth's retail sales and use taxes pursuant to the provisions of
1845 this act. Such guidelines shall include, but shall not be limited to, a bracket system for the
1846 collection of retail sales and use taxes in the Commonwealth on transactions of five dollars or less.
1847 The development of such guidelines shall be exempt from the provisions of the Administrative
1848 Process Act (§ 2.2-4000 et seq.) of the Code of Virginia.

1849 4. That the amendments to § 58.1-609.3 of the Code of Virginia pursuant to the provisions of this
1850 act shall not result in sales or use tax liability for any tangible personal property purchased or
1851 leased pursuant to a bona fide contract for the sale or lease of tangible personal property that was
1852 entered into on or before March 1, 2004, and provided that such tangible personal property was
1853 placed in service on or before August 1, 2004.

1854 5. That notwithstanding any provision of law to the contrary, including § 56-582 of the Code of
1855 Virginia, any public utility that is, as a result of the provisions of this act, subject to a sales and
1856 use tax on tangible personal property purchased or leased for use or consumption by such utility
1857 in the rendition of its public service is hereby authorized to recover from each customer that
1858 customer's pro rata share of the public utility's actual expense therefor by means of a sales and
1859 use tax surcharge. The surcharge shall be subject to annual review and verification by the State
1860 Corporation Commission in the year subsequent to the surcharge, based on data provided in an
1861 annual information filing or other information provided to the State Corporation Commission by
1862 such utility; however, such review and verification shall neither constitute a rate case nor be the
1863 subject of a rate case. If the State Corporation Commission determines that the amount of the
1864 surcharge differed from the actual sales and use tax incurred as a result of the provisions of this
1865 act, a surcharge adjustment shall be applied in the following year. Any excess in the surcharge
1866 shall be refunded to ratepayers as a deduction against the surcharge to be imposed in that
1867 subsequent year. Any shortfall in the surcharge shall be recovered through an increase in the
1868 surcharge to be imposed in that subsequent year. A surcharge that is allocated on a proportionate
1869 basis or according to the allocation factors in the utility's most recent State Corporation
1870 Commission-approved cost allocation study shall be presumed valid.

1871 6. That the Tax Commissioner shall establish guidelines and rules for (i) transitional procedures in
1872 regard to the increase in the state cigarette tax and (ii) implementation of the tax on tobacco
1873 products under Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of the Code of
1874 Virginia, pursuant to the provisions of this act. The development of such guidelines and rules by
1875 the Tax Commissioner shall be exempt from the provisions of the Administrative Process Act
1876 (§ 2.2-4000 et seq.).

1877 7. That the taxes set forth under Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 of
1878 the Code of Virginia pursuant to the provisions of this act shall be imposed beginning March 1,
1879 2005, for taxable sales or purchases under such article occurring on and after such date.

1880 8. That §§ 58.1-390, 58.1-394, 58.1-627, and 58.1-628 of the Code of Virginia are repealed.

1881 9. That the provisions of this act shall not become effective unless the Commonwealth's
1882 reimbursements to certain local governments for tangible personal property tax relief on
1883 qualifying vehicles, as such term is defined in § 58.1-3523 of the Code of Virginia, are set at \$950
1884 million per year for tax year 2006 and each succeeding tax year, payable over the twelve-month
1885 period that corresponds with the Commonwealth's fiscal year, beginning July 2006, under
1886 legislation passed by the 2004 Special Session I of the General Assembly that becomes law.