

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 58.1-602 of the Code of Virginia, relating to sales and use tax;*
 3 *manufactured signs.*

4 [H 2774]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 58.1-602 of the Code of Virginia is amended and reenacted as follows:**

8 § 58.1-602. Definitions.

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

10 "Advertising" means the planning, creating, or placing of advertising in newspapers, magazines,
 11 billboards, broadcasting and other media, including, without limitation, the providing of concept, writing,
 12 graphic design, mechanical art, photography and production supervision. Any person providing
 13 advertising as defined herein shall be deemed to be the user or consumer of all tangible personal
 14 property purchased for use in such advertising.

15 "Amplification, transmission and distribution equipment" means, but is not limited to, production,
 16 distribution, and other equipment used to provide Internet-access services, such as computer and
 17 communications equipment and software used for storing, processing and retrieving end-user subscribers'
 18 requests.

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

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

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

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

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

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

43 "Import" and "imported" are words applicable to tangible personal property imported into this
 44 Commonwealth from other states as well as from foreign countries, and "export" and "exported" are
 45 words applicable to tangible personal property exported from this Commonwealth to other states as well
 46 as to foreign countries.

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

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

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

55 "Lease or rental" means the leasing or renting of tangible personal property and the possession or use
 56 thereof by the lessee or renter for a consideration, without transfer of the title to such property.
 57

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

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

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

80 "Modular building manufacturer" means a person or corporation who owns or operates a
81 manufacturing facility and is engaged in the fabrication, construction and assembling of building
82 supplies and materials into modular buildings, as defined in this section, at a location other than at the
83 site where the modular building will be assembled on the permanent foundation and may or may not be
84 engaged in the process of affixing the modules to the foundation at the permanent site.

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

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

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

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

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

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

108 "Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in
109 the form of tangible personal property or services taxable under this chapter, and shall include any such
110 transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale
111 must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale
112 for resale which is not in strict compliance with such regulations shall be personally liable for payment
113 of the tax.

114 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
115 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90
116 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
117 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
118 a consideration; and (ii) sales of tangible personal property to persons for resale when because of the

119 operation of the business, or its very nature, or the lack of a place of business in which to display a
 120 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
 121 adequate records, or because such persons are minors or transients, or because such persons are engaged
 122 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
 123 lose tax funds due to the difficulty of policing such business operations. The Tax Commissioner is
 124 authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax
 125 imposed by this chapter on the cost price of such tangible personal property to such persons and may
 126 refuse to issue certificates of registration to such persons.

127 The term "transient" shall not include a purchaser of camping memberships, time-shares,
 128 condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in,
 129 real estate, however created or sold and whether registered with this Commonwealth or not. Further, a
 130 purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a
 131 specific real estate project on an ongoing basis throughout its term shall not be deemed a transient;
 132 provided, however, that the term or time period involved is for seven years or more.

133 The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal
 134 property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i)
 135 at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the
 136 transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the
 137 purchaser manufactures goods.

138 "Retailer" means every person engaged in the business of making sales at retail, or for distribution,
 139 use, consumption, or storage to be used or consumed in this Commonwealth.

140 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional
 141 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any
 142 rendition of a taxable service for a consideration, and includes the fabrication of tangible personal
 143 property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and
 144 the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on
 145 the premises of the person furnishing, preparing, or serving such tangible personal property. A
 146 transaction whereby the possession of property is transferred but the seller retains title as security for the
 147 payment of the price shall be deemed a sale.

148 "Sales price" means the total amount for which tangible personal property or services are sold,
 149 including any services that are a part of the sale, valued in money, whether paid in money or otherwise,
 150 and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer,
 151 without any deduction therefrom on account of the cost of the property sold, the cost of materials used,
 152 labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any
 153 cash discount allowed and taken (ii) finance charges, carrying charges, service charges or interest from
 154 credit extended on sales of tangible personal property under conditional sale contracts or other
 155 conditional contracts providing for deferred payments of the purchase price, or (iii) separately stated
 156 local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit
 157 or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the
 158 net difference between the sales price of the new or used articles and the credit for the used articles.

159 "Storage" means any keeping or retention of tangible personal property for use, consumption or
 160 distribution in this Commonwealth, or for any purpose other than sale at retail in the regular course of
 161 business.

162 "Tangible personal property" means personal property which may be seen, weighed, measured, felt,
 163 or touched, or is in any other manner perceptible to the senses. The term "tangible personal property"
 164 shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible
 165 personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt
 166 from all other state and local utility taxes, and (ii) *manufactured signs*.

167 "Use" means the exercise of any right or power over tangible personal property incident to the
 168 ownership thereof, except that it does not include the sale at retail of that property in the regular course
 169 of business. The term does not include the exercise of any right or power, including use, distribution, or
 170 storage, over any tangible personal property sold to a nonresident donor for delivery outside of the
 171 Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the
 172 Commonwealth via mail or telephone.

173 "Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein
 174 defined.

175 "Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to
 176 those activities which are an integral part of the production of a product, including all steps of an
 177 integrated manufacturing or mining process, but not including ancillary activities such as general
 178 maintenance or administration. When used in relation to mining, it shall refer to the activities specified
 179 above, and in addition, any reclamation activity of the land previously mined by the mining company

180 required by state or federal law.

181 "Video programmer" means a person or entity that provides video programming to end-user
182 subscribers.

183 "Video programming" means video and/or information programming provided by or generally
184 considered comparable to programming provided by a cable operator including, but not limited to,
185 Internet service.