

11101029D

HOUSE BILL NO. 1604

Offered January 12, 2011

Prefiled January 7, 2011

A *BILL to amend and reenact § 58.1-416 of the Code of Virginia, relating to corporate income tax; sourcing of sales, other than sales of tangible personal property.*

Patrons—Albo, Rust, Lewis and May

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-416 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-416. When certain other sales deemed in the Commonwealth.

Sales, other than sales of tangible personal property, are in the Commonwealth if:

1. The income-producing activity is performed in the Commonwealth; or

2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance the taxpayer has exploited the market provided by the Commonwealth to the extent that any benefit or use of such sale is to a person or location in the Commonwealth.

The Department shall develop and publish guidelines implementing the provisions of this section. The guidelines shall contain provisions that (i) assert to the maximum extent permitted by law Virginia's authority to calculate and impose its income tax with respect to the sale of services, the benefits of which are received in Virginia, the sale of marketable securities when the customer is in Virginia, and the sale, lease, rental, or licensing of real, personal, or intangible property when such property, other than property subject to § 58.1-415, is located in or used in Virginia; (ii) address the extent, if any, to which sourcing may be based upon estimates when necessary information is not in the possession of the taxpayer; and (iii) address the manner in which abuse of the sourcing rules may be remedied, which remedies may include reliance on the location of income-producing activity and direct costs of performance under the law and regulations as they existed prior to the amendment of this section. The development and publication of the guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2. That the revenues generated in accordance with the provisions of this act shall be non-general fund revenues dedicated to the Highway Maintenance and Operating Fund.

3. That the provisions of this act shall become effective for taxable years beginning on or after January 1 of the year after the Department of Taxation publishes the guidelines mandated by this act.