

18102193D

HOUSE BILL NO. 966

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend and reenact §§ 58.1-320, 58.1-602, as it is currently effective and as it may become effective, 58.1-603, as it is currently effective and as it may become effective, 58.1-609.5, 58.1-609.6, 58.1-611.1, 58.1-612, and 58.1-623 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to taxation in the Commonwealth; income tax, sales tax, and credit for certain local taxes.*

Patron—Davis

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-320, 58.1-602, as it is currently effective and as it may become effective, 58.1-603, as it is currently effective and as it may become effective, 58.1-609.5, 58.1-609.6, 58.1-611.1, 58.1-612, and 58.1-623 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13 as follows:

§ 58.1-320. Imposition of tax.

A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual as follows:

Two percent on income not exceeding \$3,000 for taxable years beginning before January 1, 2019;

Three percent on income in excess of \$3,000, but not in excess of \$5,000 for taxable years beginning before January 1, 2019;

Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

Five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning January 1, 1990;

Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989; and

Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990.

§ 58.1-439.12:13. Credit for certain local taxes paid by businesses.

A. For taxable years beginning on and after January 1, 2018, and before January 1, 2023, any business shall be allowed a credit against the taxes levied pursuant to this chapter. The amount of the credit shall be equal to the aggregate of the business's tax paid, during the same taxable year for which the credit is claimed, for taxes imposed in any jurisdiction pursuant to:

1. Article 2 (§ 58.1-3507 et seq.) of Chapter 35;

2. Article 3 (§ 58.1-3509 et seq.) of Chapter 35; and

3. Chapter 37 (§ 58.1-3700 et seq.), but not including taxes imposed pursuant to § 58.1-3712 or 58.1-3713.

B. If the amount of credit allowed under this section exceeds the business's tax liability under this chapter, the excess shall constitute an overpayment, as described in § 58.1-309, and the Department shall refund such overpayment to the business. The person may not carry forward any unused credit.

§ 58.1-602. (Contingent expiration date) Definitions.

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

INTRODUCED

HB966

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

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

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

70 "*Business-to-business service*" means a service provided by a business to a business.

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

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

78 "Distribution" means the transfer or delivery of a *taxable service* or tangible personal property for
79 use, consumption, or storage by the distributee, and the use, consumption, or storage of a *taxable*
80 *service* or tangible personal property by a person who has processed, manufactured, refined, or
81 converted such *taxable service* or *tangible personal* property, but does not include the transfer or
82 delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt
83 under this chapter.

84 "*Educational service*" means instruction and training provided by a school, college, university, or
85 training centers.

86 "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental
87 of tangible personal property or for furnishing *taxable* services, computed with the same deductions,
88 where applicable, as for sales price as defined in this section over the term of the lease, rental, service,
89 or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying
90 charges, service charges, or interest from credit extended on the lease or rental of tangible personal
91 property under conditional lease or rental contracts or other conditional contracts providing for the
92 deferred payments of the lease or rental price.

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

99 "*Health care service*" means a service provided by a physician, chiropractor, dentist, nurse, nurse
100 practitioner, physician's assistant, optometrist, dental hygienist, professional counselor, clinical social
101 worker, clinical psychologist, marriage and family therapist, physical therapist, or pharmacist who is
102 licensed pursuant to Title 54.1 and who provides services within the scope of his licensure.

103 "Import" and "imported" are words applicable to *taxable services* or tangible personal property
104 imported into the Commonwealth from other states as well as from foreign countries, and "export" and
105 "exported" are words applicable to *taxable services* or tangible personal property exported from the
106 Commonwealth to other states as well as to foreign countries.

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

110 "Integrated process," when used in relation to semiconductor manufacturing, means a process that
111 begins with the research or development of semiconductor products, equipment, or processes, includes
112 the handling and storage of raw materials at a plant site, and continues to the point that the product is
113 packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing,
114 any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be
115 deemed used as part of the integrated process if its use contributes, before, during, or after production,
116 to higher product quality, production yields, or process efficiencies. Except as otherwise provided by
117 law, such term shall not mean general maintenance or administration.

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

120 "Internet service" means a service that enables users to access proprietary and other content,

information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

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

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

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

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

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

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

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid. "Motor vehicle" does not include any all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. The taxes under this chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles, mopeds, and off-road motorcycles.

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

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

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

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

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

182 "Real estate service" means services involving the rental, lease, or sale of real property, whether
183 commercial, industrial, or residential; the brokering of real estate transactions; investment counseling
184 related to real estate transactions; preparing, executing, and recording documents related to real estate
185 transactions; title searches; and environmental evaluation and remediation activities related to real
186 estate.

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

193 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
194 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90
195 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
196 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
197 a consideration; (ii) sales of tangible personal property to persons for resale when because of the
198 operation of the business, or its very nature, or the lack of a place of business in which to display a
199 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
200 adequate records, or because such persons are minors or transients, or because such persons are engaged
201 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
202 lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge
203 made for automotive refinish repair materials that are permanently applied to or affixed to a motor
204 vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or
205 purchase by a provider of satellite television programming to the customer of such programming.
206 Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the
207 customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized
208 to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by
209 this chapter on the cost price of such tangible personal property to such persons and may refuse to issue
210 certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also shall
211 specifically include the separately stated charge made for supplies used during automotive repairs
212 whether or not there is transfer of title or possession of the supplies and whether or not the supplies are
213 attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the
214 customer of such repair services shall be deemed a sale for resale.

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

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

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

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

236 "Sales price" means the total amount for which taxable services or tangible personal property or
237 services are sold, including any taxable services that are a part of the sale, valued in money, whether
238 paid in money or otherwise, and includes any amount for which credit is given to the purchaser,
239 consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the
240 property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever.
241 "Sales price" shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying
242 charges, service charges or interest from credit extended on sales of tangible personal property under
243 conditional sale contracts or other conditional contracts providing for deferred payments of the purchase

price; ~~(iii)~~ (ii) separately stated local property taxes collected; ~~(iv)~~ (iii) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or ~~(v)~~ (iv) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% percent of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

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

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

"Taxable service" means any service used or consumed in the Commonwealth. For purposes of taxing taxable services, the Department shall assert the Commonwealth's jurisdictional nexus with taxpayers to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. "Taxable service" does not include a business-to-business service, educational service, health care service, or real estate service.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

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

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

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

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

§ 58.1-602. (Contingent effective date) Definitions.

A. As used in this chapter, unless the context clearly shows otherwise:

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

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

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

311 *"Business-to-business service" means a service provided by a business to a business.*

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

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

319 "Distribution" means the transfer or delivery of a taxable service or tangible personal property for
320 use, consumption, or storage by the distributee, and the use, consumption, or storage of a taxable
321 service or tangible personal property by a person who has processed, manufactured, refined, or
322 converted such taxable service or tangible personal property, but does not include the transfer or
323 delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt
324 under this chapter.

325 *"Educational service" means instruction and training provided by a school, college, university, or*
326 *training centers.*

327 "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental
328 of tangible personal property or for furnishing taxable services, computed with the same deductions,
329 where applicable, as for sales price as defined in this section over the term of the lease, rental, service,
330 or use, but not less frequently than monthly. ~~"Gross proceeds" does not include finance charges, carrying~~
331 ~~charges, service charges, or interest from credit extended on the lease or rental of tangible personal~~
332 ~~property under conditional lease or rental contracts or other conditional contracts providing for the~~
333 ~~deferred payments of the lease or rental price.~~

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

340 *"Health care service" means a service provided by a physician, chiropractor, dentist, nurse, nurse*
341 *practitioner, physician's assistant, optometrist, dental hygienist, professional counselor, clinical social*
342 *worker, clinical psychologist, marriage and family therapist, physical therapist, or pharmacist who is*
343 *licensed pursuant to Title 54.1 and who provides services within the scope of his licensure.*

344 "Import" and "imported" are words applicable to taxable services or tangible personal property
345 imported into the Commonwealth from other states as well as from foreign countries, and "export" and
346 "exported" are words applicable to taxable services or tangible personal property exported from the
347 Commonwealth to other states as well as to foreign countries.

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

351 "Integrated process," when used in relation to semiconductor manufacturing, means a process that
352 begins with the research or development of semiconductor products, equipment, or processes, includes
353 the handling and storage of raw materials at a plant site, and continues to the point that the product is
354 packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing,
355 any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be
356 deemed used as part of the integrated process if its use contributes, before, during, or after production,
357 to higher product quality, production yields, or process efficiencies. Except as otherwise provided by
358 law, such term shall not mean general maintenance or administration.

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

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

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

366 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting

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

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

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

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

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

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid. "Motor vehicle" does not include any all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. The taxes under this chapter or pursuant to the authority granted under this chapter shall apply to such all-terrain vehicles, mopeds, and off-road motorcycles.

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

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

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

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

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Real estate service" means services involving the rental, lease, or sale of real property, whether commercial, industrial, or residential; the brokering of real estate transactions; investment counseling related to real estate transactions; preparing, executing, and recording documents related to real estate transactions; title searches; and environmental evaluation and remediation activities related to real estate.

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

434 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
435 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90
436 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any
437 other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for
438 a consideration; (ii) sales of tangible personal property to persons for resale when because of the
439 operation of the business, or its very nature, or the lack of a place of business in which to display a
440 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
441 adequate records, or because such persons are minors or transients, or because such persons are engaged
442 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
443 lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge
444 made for automotive refinish repair materials that are permanently applied to or affixed to a motor
445 vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or
446 purchase by a provider of satellite television programming to the customer of such programming.
447 Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the
448 customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized
449 to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by
450 this chapter on the cost price of such tangible personal property to such persons and may refuse to issue
451 certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also shall
452 specifically include the separately stated charge made for supplies used during automotive repairs
453 whether or not there is transfer of title or possession of the supplies and whether or not the supplies are
454 attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the
455 customer of such repair services shall be deemed a sale for resale.

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

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

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

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

477 "Sales price" means the total amount for which *taxable services or tangible personal property or*
478 *services are* sold, including any *taxable* services that are a part of the sale, valued in money, whether
479 paid in money or otherwise, and includes any amount for which credit is given to the purchaser,
480 consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the
481 property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever.
482 "Sales price" shall not include (i) any cash discount allowed and taken; ~~(ii) finance charges, carrying~~
483 ~~charges, service charges or interest from credit extended on sales of tangible personal property under~~
484 ~~conditional sale contracts or other conditional contracts providing for deferred payments of the purchase~~
485 ~~price;~~ ~~(iii)~~ (ii) separately stated local property taxes collected; ~~(iv)~~ (iii) that portion of the amount paid
486 by the purchaser as a discretionary gratuity added to the price of a meal; or ~~(v)~~ (iv) that portion of the
487 amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the
488 price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed
489 20 percent of the price of the meal. Where used articles are taken in trade, or in a series of trades as a

credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

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

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

"Taxable service" means any service used or consumed in the Commonwealth. For purposes of taxing taxable services, the Department shall assert the Commonwealth's jurisdictional nexus with taxpayers to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. "Taxable service" does not include a business-to-business service, educational service, health care service, or real estate service.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

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

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

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

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

B. Notwithstanding the definitions in subsection A, to the extent that conformity to any remote collection authority legislation enacted by the Congress of the United States shall so require, the words and terms used in this chapter related to the minimum simplification requirements shall have the same meaning as provided in such federal legislation.

§ 58.1-603. (Contingent expiration date) Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail ~~or, distributing, leasing, renting, or furnishing taxable services or tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter; or who leases or rents such property within this Commonwealth, in~~ the amount of 4.3 percent:

1. Of the gross sales price of each *taxable service or* item or article of tangible personal property when sold at retail ~~or~~, distributed, *or furnished* in this Commonwealth.

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

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

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

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

§ 58.1-603. (Contingent effective date) Imposition of sales tax.

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

1. Of the gross sales price of each *taxable service or* item or article of tangible personal property when sold at retail ~~or~~, distributed, *or furnished* in this Commonwealth.

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

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

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

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

§ 58.1-609.3. Commercial and industrial exemptions.

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

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

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 2 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel, or for machinery, tools, and equipment used to generate energy derived from sunlight or wind. The exemption for machinery, tools, and equipment used to generate energy derived from sunlight or wind shall expire June 30, 2027.

3. Tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the

Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

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

6. Notwithstanding the provisions of subdivision 20 of § 58.1-609.10, all tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

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

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

9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section.

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

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

12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

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

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

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

14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible personal property used primarily in the integrated process of designing, developing, manufacturing, or testing a semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor equipment without regard to whether the property is actually contained in or used in a cleanroom environment, touches the product, is used before or after production, or is affixed to or incorporated into

674 real estate.

675 15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

676 16. Railroad rolling stock when sold or leased by the manufacturer thereof.

677 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers
678 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter
679 ending November 2007, for the processing, storage, retrieval, or communication of data, including but
680 not limited to servers, routers, connections, and other enabling hardware when part of a new investment
681 of at least \$75 million in such exempt property, when such investment results in the creation of at least
682 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such
683 investment was made in accordance with a memorandum of understanding with the Virginia Economic
684 Development Partnership Authority entered into or amended between January 1, 2008, and December
685 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to
686 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The
687 exemption shall not apply to any computer software sold separately from the computer equipment, nor
688 shall it apply to general building improvements or fixtures.

689 18. Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software
690 purchased or leased for the processing, storage, retrieval, or communication of data, including but not
691 limited to servers, routers, connections, and other enabling hardware, including chillers and backup
692 generators used or to be used in the operation of the equipment exempted in this paragraph, provided
693 that such computer equipment or enabling software is purchased or leased for use in a data center that
694 (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009,
695 of at least \$150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs
696 by the data center operator and the tenants of the data center, collectively, associated with the operation
697 or maintenance of the data center provided that such jobs pay at least one and one-half times the
698 prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new
699 jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at
700 least 150 percent of the average statewide unemployment rate for such year as determined by the
701 Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies
702 to the data center operator and the tenants of the data center if they collectively meet the requirements
703 listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption,
704 including a data center operator on behalf of itself and its tenants, must enter into a memorandum of
705 understanding with the Virginia Economic Development Partnership Authority that at a minimum
706 provides the details for determining the amount of capital investment made and the number of new jobs
707 created, the timeline for achieving the capital investment and new job goals, the repayment obligations
708 should those goals not be achieved, and any conditions under which repayment by the qualifying data
709 center or data center tenant claiming the exemption may be required. In addition, the exemption shall
710 apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement,
711 or replace computer equipment or enabling software purchased or leased in the initial investment. The
712 exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title
713 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building
714 improvements or other fixtures.

715 19. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to
716 subdivision 1 or 2 of § 4.1-208, (i) machinery, tools, and equipment, or repair parts therefor or
717 replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing,
718 or conversion into beer where such materials either enter into the production of or become a component
719 part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums,
720 or bags for future use, for packaging the beer for shipment or sale.

721 **§ 58.1-609.5. Service exemptions.**

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

724 1. Professional, insurance, or personal service transactions which involve sales as inconsequential
725 elements for which no separate charges are made; services rendered by repairmen for which a separate
726 charge is made; and services not involving an exchange of tangible personal property which provide
727 access to or use of the Internet and any other related electronic communication service, including
728 software, data, content and other information services delivered electronically via the Internet.

729 2. An amount separately charged for labor or services rendered in installing, applying, remodeling, or
730 repairing property sold or rented

731 3. Transportation charges separately stated.

732 4. Separately stated charges for alterations to apparel, clothing and garments.

733 5. Charges for gift wrapping services performed by a nonprofit organization.

734 6. An amount separately charged for labor or services rendered in connection with the modification
735 of prewritten programs as defined in § 58.1-602.

7. Custom programs as defined in § 58.1-602.

8.1. Business-to-business services.

2. Educational services.

3. Health care services.

4. Real estate services.

5. The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for more than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration.

9. Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair or replacement parts and repair labor, shall be subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may purchase repair or replacement parts under a resale certificate of exemption. Warranty plans issued by an insurance company, which constitute insurance transactions, are subject to the provisions of subdivision 4 above.

§ 58.1-609.6. Media-related exemptions.

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

1. Leasing, renting or licensing of copyright audio or video tapes, and films for public exhibition at motion picture theaters or by licensed radio and television stations.

2. Broadcasting equipment and parts and accessories thereto and towers used or to be used by commercial radio and television companies, wired or land based wireless cable television systems, common carriers or video programmers using an open video system or other video platform provided by telephone common carriers, or concerns which are under the regulation and supervision of the Federal Communications Commission and amplification, transmission and distribution equipment used or to be used by wired or land based wireless cable television systems, or open video systems or other video systems provided by telephone common carriers.

3. 2. Any publication issued daily, or regularly at average intervals not exceeding three months, and advertising supplements and any other printed matter ultimately distributed with or as part of such publications; however, newsstand sales of the same are taxable. As used in this subdivision, the term "newsstand sales" shall not include sales of back copies of publications by the publisher or his agent.

4. 3. Catalogs, letters, brochures, reports, and similar printed materials, except administrative supplies, the envelopes, containers and labels used for packaging and mailing same, and paper furnished to a printer for fabrication into such printed materials, when stored for 12 months or less in the Commonwealth and distributed for use without the Commonwealth. As used in this subdivision, "administrative supplies" includes, but is not limited to, letterhead, envelopes, and other stationery; and invoices, billing forms, payroll forms, price lists, time cards, computer cards, and similar supplies. Notwithstanding the provisions of subdivision 5 or the definition of "advertising" contained in § 58.1-602, (i) any advertising business located outside the Commonwealth which purchases printing from a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials when such purchases would have been exempt under this subdivision, and (ii) from July 1, 1995, through June 30, 2002, and beginning July 1, 2002, and ending July 1, 2022, any advertising business which purchases printing from a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials when such purchases would have been exempt under subdivision 3 or this subdivision, provided that the advertising agency shall certify to the Tax Commissioner, upon request, that such printed material was distributed outside the Commonwealth and such certification shall be retained as a part of the transaction record and shall be subject to further review by the Tax Commissioner.

5. Advertising as defined in § 58.1-602.

6. Beginning July 1, 1995, and ending July 1, 2022:

a. (i) The lease, rental, license, sale, other transfer, or use of any audio or video tape, film or other audiovisual work where the transferee or user acquires or has acquired the work for the purpose of licensing, distributing, broadcasting, commercially exhibiting or reproducing the work or using or incorporating the work into another such work; (ii) the provision of production services or fabrication in connection with the production of any portion of such audiovisual work, including, but not limited to, scriptwriting, photography, sound, musical composition, special effects, animation, adaptation, dubbing, mixing, editing, cutting and provision of production facilities or equipment; or (iii) the transfer or use of tangible personal property, including, but not limited to, scripts, musical scores, storyboards, artwork, film, tapes and other media, incident to the performance of such services or fabrication; however, audiovisual works and incidental tangible personal property described in clauses (i) and (iii) shall be subject to tax as otherwise provided in this chapter to the extent of the value of their tangible components prior to their use in the production of any audiovisual work and prior to their enhancement

797 by any production service; and

798 b. Equipment and parts and accessories thereto used or to be used in the production of such
799 audiovisual works.

800 7. 4. Beginning July 1, 1998, and ending July 1, 2022, textbooks and other educational materials
801 withdrawn from inventory at book-publishing distribution facilities for free distribution to professors and
802 other individuals who have an educational focus.

803 **§ 58.1-610. Contractors.**

804 A. Any person who contracts orally, in writing, or by purchase order, to perform construction,
805 reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon, and
806 in connection therewith to furnish tangible personal property, shall be deemed to have purchased such
807 tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such
808 person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for
809 resale, and the dealer making the sale, distribution, or lease to or storage for such person shall be
810 obligated to collect the tax to the extent required by this chapter.

811 B. Any person who contracts to perform services in this Commonwealth and is furnished tangible
812 personal property for use under the contract by the person, or his agent or representative, for whom the
813 contract is performed, and a sales or use tax has not been paid to this Commonwealth by the person
814 supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal
815 property so used, and shall pay a use tax based on the fair market value of the tangible personal
816 property so used, irrespective of whether or not any right, title or interest in the tangible personal
817 property becomes vested in the contractor. This subsection, however, shall not apply to the industrial
818 materials exclusion or the other industrial exclusions set out in § 58.1-609.3, including those set out in
819 subdivisions 2, 3 and 4 thereof; the media-related exemptions set out in subdivision 2 1 of § 58.1-609.6;
820 the governmental exclusions set out in subdivision 4 of § 58.1-609.1; the agricultural exclusions set
821 forth in subdivision 1 of § 58.1-609.2; or the exclusion for baptistries set forth in § 58.1-609.10.

822 C. Any person who contracts orally, in writing, or by purchase order to perform any service in the
823 nature of equipment rental, and the principal part of that service is the furnishing of equipment or
824 machinery which will not be under the exclusive control of the contractor, shall be liable for the sales or
825 use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal
826 property.

827 D. Tangible personal property incorporated in real property construction which loses its identity as
828 tangible personal property shall be deemed to be tangible personal property used or consumed within the
829 meaning of this section.

830 E. Nothing in this section shall be construed to (i) affect or limit the resale exclusion provided for in
831 this chapter, or the industrial materials and other industrial exclusions set out in § 58.1-609.3, the
832 exclusion for baptistries set out in § 58.1-609.10, or the partial exclusion for the sale of modular
833 buildings as set out in § 58.1-610.1, or (ii) impose any sales or use tax with respect to the use in the
834 performance of contracts with the United States, this Commonwealth, or any political subdivision
835 thereof, of tangible personal property owned by a governmental body which actually is not used or
836 consumed in the performance thereof.

837 F. Notwithstanding the other provisions of this section, any person engaged in the business of
838 furnishing and installing locks and locking devices shall be deemed a retailer of such items and not a
839 using or consuming contractor with respect to them.

840 G. Notwithstanding the other provisions of this section, any person or entity primarily engaged in the
841 business of furnishing and installing tangible personal property that provides electronic or physical
842 security on real property for the use of a financial institution, shall be deemed a retailer of such personal
843 property, including when such personal property is installed on real property not for the use of a
844 financial institution.

845 **§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.**

846 A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be
847 levied and distributed as follows:

848 1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be
849 three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the
850 revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
851 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
852 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half
853 percent shall be used for general fund purposes.

854 2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross
855 sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the
856 rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the
857 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and
858 D of § 58.1-638.

3. On and after July 1, 2018, such food shall be exempt from the taxes imposed by §§ 58.1-603 and 58.1-604.

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

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

§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.

A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons who are dealers, as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under subsections (i) B and C or (ii) B and D.

B. The term "dealer," as used in this chapter, shall include every person who:

1. Manufactures or produces *taxable services or* tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

2. Imports or causes to be imported into this Commonwealth *taxable services or* tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, *taxable services or* tangible personal property;

4. Has sold at retail, used, consumed, distributed, *furnished*, or stored for use or consumption in this Commonwealth, *taxable services or* tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such *taxable services or* tangible personal property;

5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;

6. Is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;

7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § 58.1-613; or

8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether he holds, or is required to hold, a certificate of registration under § 58.1-613.

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if he:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;

2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;

3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;

4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier *or furnishes services valued at \$5,000 or more during a calendar year*. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods sold by him;

5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;

6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this

920 Commonwealth of authorized installation, servicing, or repair facilities;

921 7. Is owned or controlled by the same interests which own or control a business located within this
922 Commonwealth;

923 8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the
924 franchisee or licensee is required to obtain a certificate of registration under § 58.1-613; or

925 9. Owns tangible personal property that is for sale located in this Commonwealth, or that is rented or
926 leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to
927 consumers in this Commonwealth.

928 D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration
929 under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled
930 person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the
931 Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its
932 customers. The presumption in this subsection may be rebutted by demonstrating that the activities
933 conducted by the commonly controlled person in the Commonwealth are not significantly associated
934 with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales.
935 For purposes of this subsection, a "commonly controlled person" means any person that is a member of
936 the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of
937 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of
938 organization, bears the same ownership relationship to the dealer as a corporation that is a member of
939 the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of
940 1954, as amended or renumbered.

941 E. Notwithstanding any other provision of this section, the following shall not be considered to
942 determine whether a person who has contracted with a commercial printer for printing in the
943 Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to
944 be required to register under § 58.1-613:

945 1. The ownership or leasing by that person of tangible or intangible property located at the Virginia
946 premises of the commercial printer which is used solely in connection with the printing contract with the
947 person;

948 2. The sale by that person of property of any kind printed at and shipped or distributed from the
949 Virginia premises of the commercial printer;

950 3. Activities in connection with the printing contract with the person performed by or on behalf of
951 that person at the Virginia premises of the commercial printer; and

952 4. Activities in connection with the printing contract with the person performed by the commercial
953 printer within Virginia for or on behalf of that person.

954 F. In addition to the jurisdictional standards contained in subsections C and D, nothing contained
955 herein (other than subsection E) shall limit any authority which this Commonwealth may enjoy under
956 the provisions of federal law or an opinion of the United States Supreme Court to require the collection
957 of sales and use taxes by any dealer who regularly or systematically solicits sales within this
958 Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer,
959 outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or
960 distributes paid commercial advertising in this Commonwealth which is intended to be disseminated
961 primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax
962 imposed under this chapter solely because such broadcaster, printer, outdoor advertising firm, advertising
963 distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

964 G. F. (Contingent effective date) Pursuant to any federal legislation that grants states the authority to
965 require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by
966 such federal legislation, to require collection of sales and use tax by any remote seller, or a single or
967 consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for
968 sellers whose sales are less than a minimum amount, then in determining such amount, the sales made
969 by all persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the
970 Internal Revenue Code of 1986 shall be aggregated.

971 **§ 58.1-623. Sales or leases presumed subject to tax; exemption certificates.**

972 A. All sales or leases are subject to the tax until the contrary is established. The burden of proving
973 that a sale, or distribution, of *taxable services or tangible personal property* or the lease, or storage of
974 tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a
975 certificate to the effect that the property is exempt under this chapter. However, the sale or distribution
976 of cigarettes shall be subject to the provisions of § 58.1-623.2 and require a cigarette exemption
977 certificate issued pursuant to § 58.1-623.2.

978 B. The certificate mentioned in this section shall relieve the person who takes such certificate from
979 any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner
980 that such certificate is no longer acceptable. Such certificate shall be signed by and bear the name and
981 address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the

taxpayer; shall indicate the general character of the *taxable service or* tangible personal property sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. If an exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under § 58.1-609.11, the exemption certificate shall be valid until the scheduled expiration date stated on the exemption certificate.

C. If a taxpayer who gives a certificate under this section makes any use of the *taxable service or tangible personal* property other than an exempt use or retention, demonstration, or display while holding the property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property *or service* to him shall be deemed the sales price of such retail sale. If the sole use of the property *or service* other than retention, demonstration, or display in the regular course of business is the rental of the property *or service* while holding it for sale, distribution, or lease, the taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the property *or service* to him.

D. If a taxpayer gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

E. If a taxpayer fails to give the dealer at the time of purchase an exemption certificate previously issued by the Department, no interest shall be paid on a subsequent refund claim for any period prior to the date the taxpayer makes a complete refund claim with the Department. This subsection shall not apply to transactions exempted under self-executing certificates of exemption not issued to a specific taxpayer by the Department.