VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 58.1-601 and 58.1-602, as they are currently effective, 58.1-604, as it is currently effective and as it may become effective, 58.1-605, as it is currently effective, 58.1-612, 58.1-615, as it is currently effective, 58.1-625, as it is currently effective and as it shall become effective, and 58.1-635, as it is currently effective, of the Code of Virginia and the fourth enactment of Chapter 766 of the Acts of Assembly of 2013; to amend the Code of Virginia by adding a section numbered 58.1-612.1; and to repeal the provisions of Chapter 766 of the Acts of Assembly of 2013 amending §§ 58.1-601, 58.1-602, 58.1-605, 58.1-606, 58.1-612, 58.1-615, and 58.1-635, as they may become effective, and to repeal the seventh and fifteenth enactments of Chapter 766 of the Acts of Assembly of 2013 and the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015, as amended by Chapters 854 and 856 of the Acts of Assembly of 2018, relating to remote sales and use tax collection and sufficient activity by dealers and marketplace facilitators as to require registration for sales and use tax collection.

[S 1083]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-601 and 58.1-602, as they are currently effective, 58.1-604, as it is currently effective and as it may become effective, 58.1-605, as it is currently effective, 58.1-612, 58.1-615, as it is currently effective, 58.1-625, as it is currently effective and as it shall become effective, and 58.1-635, as it is currently effective, of the Code of Virginia and the fourth enactment of Chapter 766 of the Acts of Assembly of 2013 are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-612.1 as follows:

§ 58.1-601. (Contingent expiration date) Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter, *including the collection of state and local sales and use taxes from remote sellers.*

B. *In administering the collection of state and local sales and use taxes from remote sellers, the Tax Commissioner shall:*

1. Provide adequate information to remote sellers to enable them to identify state and local sales and use tax rates and exemptions;

2. Provide adequate information to software providers to enable them to make software and services available to remote sellers;

3. Ensure that if the Department requires a periodic audit the remote seller may complete a single audit that covers the state and local sales and use taxes in all localities; and

4. Require no more than one sales and use tax return per month be filed with the Department by any remote seller or any software provider on behalf of such remote seller.

C. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance ~~which~~ *that* the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

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

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

"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~~ *in this section* shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

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

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

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account

of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

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

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

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

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

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

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

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

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

"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~~ *"Manufacturing"* also ~~include~~ *includes* 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 *of* 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~~ *includes*, but *is* 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~~ *is* 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~~*" does* 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~~ *that* 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~~ *that* 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.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which ~~he~~ *it* 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 *that* 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~~ *includes* 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~~ *"person" means* 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.

"Remote seller" means any dealer deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 under the criteria specified in subdivision C 10 or 11 of § 58.1-612 or any software provider acting on behalf of such dealer.

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

The terms "retail sale" and a "sale at retail" ~~shall~~ specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less 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; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the

customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also ~~shall~~ specifically include the separately stated charge made for supplies used during automotive repairs whether or not there is transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for resale.

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

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

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

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

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" ~~shall~~ *does* not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) 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~~ *that* may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. ~~The term "tangible~~ *"Tangible* personal property" ~~shall~~ *does* not include stocks, bonds, notes, insurance or other obligations or securities. ~~The term "tangible~~ *"Tangible* personal property" ~~shall include~~ *includes* (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"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~~ *"Use"* 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~~ *"Use"* 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 *in this section*.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities ~~which~~ *that* 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~~ *"used directly" refers* to the activities specified ~~above,~~ *in this definition* 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.

§ 58.1-604. (Contingent expiration date) Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of 4.3 percent:

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

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

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

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

~~5. (Contingent repeal date — see note) The use tax shall not apply to out-of-state mail order catalog purchases totaling $100 or less during any calendar year.~~

§ 58.1-604. (Contingent effective date) Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in 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 cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition;

but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

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

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

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

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

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

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

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

C. *1.* The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

2. Prior to any change in the rate of any local sales and use tax, the Tax Commissioner shall provide remote sellers with at least 30 days' notice. Any change in the rate of any local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to apply the preceding effective rate until 30 days after notification is provided.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

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

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

years of the date of the payment error.

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

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

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

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

§ 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~~ *that* are dealers, as ~~hereinafter~~ defined *in this section*, and ~~who~~ *that* have sufficient contact with the Commonwealth to qualify under *(i)* subsections ~~(i)~~ B and C or (ii) *subsections* B and D.

B. ~~The term "dealer," as~~ *As* used in this chapter, ~~shall include~~ *"dealer" includes* every person ~~who~~ *that*:

1. Manufactures or produces 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 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~~ *that* offers for sale at retail, or ~~who~~ *that* has in ~~his~~ *its* possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;

4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and ~~who~~ *that* 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 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~~ *that* 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~~ *it* 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~~ *it*:

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

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

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

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

10. Receives more than $100,000 in gross revenue, or other minimum amount as may be required by federal law, from retail sales in the Commonwealth in the previous or current calendar year, provided that in determining the amount of a dealer's gross revenues, the sales made by all commonly controlled persons as defined in subsection D shall be aggregated; or

11. Engages in 200 or more separate retail sales transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year, provided that in determining the total number of a dealer's retail sales transactions, the sales made by all commonly controlled persons as defined in subsection D shall be aggregated.

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

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

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

2. The sale by that person of property of any kind printed at and shipped or distributed from the

Virginia premises of the commercial printer;

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

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

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

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

§ 58.1-612.1. Tax collectible from marketplace facilitators; "marketplace facilitator" defined.

A. As used in this chapter:

"Marketplace facilitator" means a person that contracts with a marketplace seller to facilitate, for consideration and regardless of whether such consideration is deducted as fees from transactions, the sale of such marketplace seller's products through a physical or electronic marketplace operated by such person. "Marketplace facilitator" does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle transactions between two parties. "Marketplace facilitator" does not include a platform or forum that exclusively provides internet advertising services, including any advertisements that may list products for sale, so long as such platform or forum does not also engage directly or indirectly through one or more commonly controlled persons, as defined in subsection D of § 58.1-612, in the activities described in subsection C.

"Marketplace seller" means a person that is not a commonly controlled person, as defined in subsection D of § 58.1-612, to a marketplace facilitator and that makes sales through any physical or electronic marketplace operated by such marketplace facilitator, even if such seller would not have been required to collect and remit sales and use tax had the sale not been made through such marketplace.

B. The tax levied under this chapter shall be collectible from all persons that are marketplace facilitators that have sufficient contact with Virginia to require registration under subsection C.

C. A marketplace facilitator shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if it meets at least one requirement in each of subdivisions 1, 2, and 3:

1. It engages, either directly or indirectly, through a commonly controlled person as defined in subsection D of § 58.1-612 in any of the following activities:

a. Transmitting or communicating an offer or acceptance between a purchaser and a marketplace seller;

b. Owning or operating the infrastructure, whether electronic or physical, or technology that brings purchasers and marketplace sellers together; or

c. Providing a virtual currency that purchasers are allowed or required to use to purchase products from the marketplace seller;

2. It engages in any of the following activities with respect to a marketplace seller's products:

a. Payment processing;

b. Fulfillment or storage;

c. Listing products for sale;

d. Setting prices;

e. Branding sales as those of the marketplace facilitator; or

f. Providing customer service or accepting or assisting with returns or exchanges; and

3. It establishes economic nexus through either of the following activities:

a. Facilitating sales in Virginia that, in the aggregate, generate more than $100,000 in gross

revenue, or other minimum amount as may be required by federal law, for such marketplace facilitator. A marketplace facilitator may exceed this threshold based on sales for either the previous or current calendar year. In determining the amount of a marketplace facilitator's gross revenues, the sales made by all commonly controlled persons, as defined in subsection D of § 58.1-612, shall be aggregated; or

b. Facilitating 200 or more separate retail sale transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year. In determining the total number of retail sales transactions attributable to a marketplace facilitator, the sales made by all commonly controlled persons, as defined in subsection D of § 58.1-612, shall be aggregated.

D. 1. A marketplace facilitator shall be considered a dealer for purposes of this chapter and shall collect the tax imposed by this chapter on all transactions that it facilitates through its marketplace.

2. No marketplace seller shall collect sales and use tax on a transaction made through a marketplace facilitator's marketplace.

3. Notwithstanding the provisions of subdivisions 1 and 2, the Department shall allow for a waiver from the requirements of subdivisions 1 and 2 if a marketplace facilitator demonstrates, to the satisfaction of the Commissioner, that either (i) all of its marketplace sellers already are registered dealers under § 58.1-613 or (ii) the marketplace seller has sufficient nexus to require registration under § 58.1-613 and that collection of the tax by the marketplace facilitator for such marketplace seller would create an undue burden or hardship for either party. If such waiver is granted, the tax levied under this chapter shall be collectible from the marketplace seller. The Department shall develop guidelines that establish (a) the criteria for obtaining a waiver pursuant to this section, (b) the process and procedure for a marketplace facilitator to apply for a waiver, and (c) the process for providing notice to an affected marketplace facilitator and marketplace seller of a waiver obtained pursuant to this subdivision.

E. A marketplace facilitator shall be relieved from liability, including penalties and interest, for the incorrect collection or remittance of sales and use tax on transactions it facilitates or for which it is the seller if the error is due to reasonable reliance on (i) an invalid exemption certificate provided by the marketplace seller or the purchaser; (ii) incorrect or insufficient information provided by the Commonwealth; or (iii) incorrect or insufficient information provided by the marketplace seller or purchaser regarding the tax classification or proper sourcing of an item or transaction, provided that the marketplace facilitator can demonstrate it made a reasonable effort to obtain accurate information from the marketplace seller or purchaser. The relief from liability afforded to the marketplace facilitator pursuant to this subsection shall not exceed the total amount of tax due from the marketplace facilitator on the incorrect transaction independent of any penalties or interest that would have otherwise applied. Any deficiency resulting from incorrect information provided by the marketplace seller or as the result of an audit shall be the liability of the marketplace seller.

F. A marketplace facilitator is the sole entity subject to audit by the Department for sales and use tax collection for all transactions facilitated by the marketplace facilitator unless (i) the marketplace facilitator can demonstrate that its failure to collect the proper tax was due to incorrect information provided by the marketplace seller or (ii) the marketplace seller is subject to a waiver granted pursuant to subdivision D 3.

G. If a marketplace facilitator lacks physical presence in the Commonwealth and has both facilitated and made direct sales into the Commonwealth, both types of sales shall be considered in determining whether it has established economic nexus.

H. When a marketplace seller that is not otherwise required to register for the collection of the tax under any of the provisions contained in subdivisions C 1 through 9 of § 58.1-612 makes both direct sales and sales on a marketplace facilitator's marketplace, only the marketplace seller's direct sales shall be considered in determining whether the marketplace seller is required to register for the collection of the tax under subdivision C 10 or 11 of § 58.1-612.

I. No class action shall be brought against a marketplace facilitator in any court of the Commonwealth on behalf of customers arising from or in any way related to an overpayment of sales and use tax collected on sales facilitated by the marketplace facilitator, regardless of whether such claim is characterized as a tax refund claim. Nothing in this subsection shall affect a customer's right to seek a refund on an individual basis.

§ 58.1-615. (Contingent expiration date) Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the

Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

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

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

The Tax Commissioner shall not require that more than one sales and use tax return per month be filed with the Department by any remote seller or any software provider on behalf of such remote seller.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer ~~who~~ *that* elects to file a consolidated sales tax return for any taxable period and ~~who~~ *that* is required to remit payment by electronic funds transfer pursuant to subsection B of § 58.1-202.1 beginning on and after July 1, 2010, shall file ~~his~~ *its* monthly return using an electronic medium prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

§ 58.1-625. (Effective until July 1, 2022) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer ~~who~~ *that* is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until ~~he~~ *it* can affirmatively show that the tax has since been refunded to the purchaser or credited to ~~his~~ *its* account.

D. *1.* Any dealer ~~who~~ *that* neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by ~~him~~ *it*, ~~his~~ *its* agents, or employees shall be liable for and pay the tax ~~himself~~ *itself*, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer ~~who~~ *that* neglects, fails, or refuses to pay or collect the tax herein provided, either by ~~himself~~ *itself* or through ~~his~~ *its* agents or employees, ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

2. Notwithstanding subdivision 1, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

E. ~~(Contingent effective date) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.~~

~~F.~~ All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

F. Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in §§ 58.1-611.2 and 58.1-611.3 or subdivision 18 of § 58.1-609.1 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the

purchaser, and to absorb such tax ~~himself~~ *itself*. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as ~~he~~ *it* is for tax collected from a purchaser pursuant to this section.

§ 58.1-625. (Effective July 1, 2022) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer ~~who~~ *that* is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until ~~he~~ *it* can affirmatively show that the tax has since been refunded to the purchaser or credited to ~~his~~ *its* account.

D. *1.* Any dealer ~~who~~ *that* neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by ~~him~~ *it*, ~~his~~ *its* agents, or employees shall be liable for and pay the tax ~~himself~~ *itself*, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer ~~who~~ *that* neglects, fails, or refuses to pay or collect the tax herein provided, either by ~~himself~~ *itself* or through ~~his~~ *its* agents or employees, ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

2. Notwithstanding subdivision 1, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

E. ~~(Contingent effective date — see Editor's note) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.~~

~~F.~~ All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

F. Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in § 58.1-611.2 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax ~~himself~~ *itself*. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as ~~he~~ *it* is for tax collected from a purchaser pursuant to this section.

§ 58.1-635. (Contingent expiration date) Failure to file return; fraudulent return; civil penalties.

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed ~~thirty~~ *30* percent in the aggregate. In no case, however, shall the penalty be less than ~~ten dollars~~ *$10* and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of ~~fifty~~ *50* percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports ~~his~~ *its* gross sales, gross proceeds or cost price, as the case may be, at ~~fifty~~ *50* percent or less of the actual amount.

C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § 58.1-15, after which interest shall accrue as provided therein.

D. Notwithstanding any other provision of this section, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

2. That the provisions of Chapter 766 of the Acts of Assembly of 2013 amending §§ 58.1-601, 58.1-602, 58.1-605, 58.1-606, 58.1-612, 58.1-615, and 58.1-635, as they may become effective, of the Code of Virginia are repealed.

3. That the fourth enactment of Chapter 766 of the Acts of Assembly of 2013 is amended and reenacted as follows:

4. That Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of Virginia, §§ ~~58.1-609.13,~~ 58.1-2289, as it may become effective, 58.1-2290, and 58.1-2701, as it may become effective, of the Code of Virginia and the second enactment of Chapter 822 of the Acts of Assembly of 2009, as amended by Chapter 535 of the Acts of Assembly of 2012, are repealed.

4. That the seventh and fifteenth enactments of Chapter 766 of the Acts of Assembly of 2013 and the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015, as amended by Chapters 854 and 856 of the Acts of Assembly of 2018, are repealed.

5. That nothing in this act shall be construed to appropriate or transfer any transportation revenues for nontransportation purposes pursuant to the twenty-second enactment of Chapter 896 of the Acts of Assembly of 2007 or the fourteenth enactment of Chapter 766 of the Acts of Assembly of 2013.

6. That the provisions of this act requiring remote sales and use tax collection by remote sellers and marketplace facilitators shall not apply to any retail sales transactions occurring before July 1, 2019; however, transactions occurring before July 1, 2019, may be included in the calculation of gross revenue or retail transactions pursuant to the provisions of subdivisions C 10 and 11 of § 58.1-612 of the Code of Virginia, as amended by this act. Upon written application and for good cause shown, in order to ensure the accurate and timely collection of taxes due, the Department of Taxation may temporarily suspend or delay the collection or reporting requirements, or both, of a marketplace facilitator for a period not to exceed 90 days after collection is required.

7. That the Department of Taxation shall develop guidelines implementing the provisions of this act, including guidelines implementing the provisions of subsection D of § 58.1-612.1 of the Code of Virginia, as created by this act, creating a waiver. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

8. That should any portion of this act be held unconstitutional by a court of competent jurisdiction, the remaining portions of this act shall remain in effect.