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SENATE BILL NO. 962

Offered January 14, 2020

A BILL to amend and reenact §§ 36-158, 56-129.1, 56-235.8, 56-264.2, 56-265.4:4, 56-482.1, 56-592.1, 58.1-339.2, 58.1-400.1, 58.1-400.2, 58.1-400.3, 58.1-401, 58.1-402, 58.1-403, 58.1-433.1, 58.1-439, 58.1-439.6, 58.1-439.6:1, 58.1-439.12:09, 58.1-439.18, 58.1-439.21, 58.1-439.26, 58.1-504, 58.1-2600, 58.1-2655, 58.1-2690, 58.1-2900, 58.1-2901, 58.1-2902, 58.1-2904, 58.1-2905, 58.1-3201, 58.1-3203, 58.1-3321, 58.1-3378, 58.1-3500, 58.1-3702, 58.1-3703, 58.1-3703.1, 58.1-3706, 58.1-3708, 58.1-3814, 59.1-280, and 59.1-280.1 of the Code of Virginia and to repeal §§ 15.2-5423, 58.1-440.1, 58.1-2035, 58.1-2601 through 58.1-2604, and 58.1-2606 through 58.1-2609, Article 2 (§§ 58.1-2620 through 58.1-2635) of Chapter 26 of Title 58.1, §§ 58.1-2656 and 58.1-2657, Article 6 (§§ 58.1-2660 through 58.1-2665) of Chapter 26 of Title 58.1, §§ 58.1-2670.1 and 58.1-2674.1, Article 8 (§§ 58.1-2680 through 58.1-2683) of Chapter 26 of Title 58.1, and § 58.1-3731 of the Code of Virginia, relating to repealing income and receipts taxes on public service corporations; authorizing localities to assess and tax real and personal property of public service corporations.

Patron—Ruff

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-158, 56-129.1, 56-235.8, 56-264.2, 56-265.4:4, 56-482.1, 56-592.1, 58.1-339.2, 58.1-400.1, 58.1-400.2, 58.1-400.3, 58.1-401, 58.1-402, 58.1-403, 58.1-433.1, 58.1-439, 58.1-439.6, 58.1-439.6:1, 58.1-439.12:09, 58.1-439.18, 58.1-439.21, 58.1-439.26, 58.1-504, 58.1-2600, 58.1-2655, 58.1-2690, 58.1-2900, 58.1-2901, 58.1-2902, 58.1-2904, 58.1-2905, 58.1-3201, 58.1-3203, 58.1-3321, 58.1-3378, 58.1-3500, 58.1-3702, 58.1-3703, 58.1-3703.1, 58.1-3706, 58.1-3708, 58.1-3814, 59.1-280, and 59.1-280.1 of the Code of Virginia are amended and reenacted as follows:

§ 36-158. Definitions.

As used in this chapter:

"Based assessed value" means the assessed value of real estate within a housing revitalization zone as shown upon the records of the local assessing officer on January 1 of the year preceding the date of the designation of such zone.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth and subject to tax imposed under ~~Articles~~ *Article* 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~ of Title 58.1.

"Department" means the Department of Housing and Community Development.

"Fund" means the Housing Revitalization Zone Fund.

"Housing revitalization zone" means an area declared by the Governor to be eligible for the benefits of this chapter.

"Housing unit" means any building, structure, or portion thereof, which is occupied as, or intended for occupancy as, a residence by one or more families.

"Local zone administrator" means the chief executive of the county, city, or town in which a housing revitalization zone is located, or his designee.

"Planning district" means a contiguous area within the boundaries established by the Department of Housing and Community Development.

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § 36-165.

"Qualified owner occupant" means the owner of a housing unit who also uses the housing unit as the owner's residence, and who is designated as a qualified owner occupant pursuant to § 36-165.

§ 56-129.1. Participation in the Federal Railroad Administration Safety and Inspection Program.

The State Corporation Commission shall have the authority to participate in carrying out safety inspection activities in connection with any rule, regulation, order, or standard prescribed by the Secretary of Transportation of the United States under the authority of the Federal Railroad Safety Act (49 U.S.C. § 20101 et seq.) as delegated to the Commonwealth by the Federal Railroad Administration, provided that the Commission shall comply with all the requirements imposed by the United States Code. The Commission shall employ such expert, professional or other assistance as is necessary to carry out the activities authorized by this section. Safety inspectors shall attain the Federal Railroad

Administration qualifications necessary to qualify the Commonwealth for federal funds. A maximum of $200,000 ~~paid to the State Corporation Commission under §§ 58.1-2660 through 58.1-2662~~ shall be allocated to this program *as provided in the general appropriation act*.

The Commission shall have the authority to adopt such rules in conformance with the Federal Railroad Safety Act that are necessary for the promulgation of railroad safety within the Commonwealth.

§ 56-235.8. Retail supply choice for natural gas customers.

A. Notwithstanding any provision of law to the contrary, each public utility authorized to furnish natural gas service in Virginia (gas utility) is authorized to offer to all of the gas utility's customers not eligible for transportation service under tariffs in effect on the effective date of this section, direct access to gas suppliers (retail supply choice) by filing a plan for implementing retail supply choice with the State Corporation Commission for approval. The provisions of this section shall not apply to any retail supply choice pilot program in effect on July 1, 1999. The Commission shall accept such a plan for filing within ~~thirty~~ *30* days of filing if it contains, at a minimum:

1. A schedule for implementing retail supply choice for all of its customers;

2. Tariff revisions, including proposed unbundled rates for firm and interruptible service (which may utilize a cost allocation and rate design formulated to recover the gas utility's nongas fixed costs on a nonvolumetric basis) and terms and conditions of service designed to provide nondiscriminatory open access over its transportation system, comparable to the transportation service provided by the gas utility to itself, to allow competitive suppliers to sell natural gas directly to the gas utility's customers. Any proposed unbundling rates shall include an explanation of the methodology used to develop the rates and a calculation of revenues, by customer class, thereby produced;

3. Nonbypassable, competitively neutral annual surcharges for the gas utility to properly allocate and recover from its firm service customers not eligible for nonpilot transportation service under tariffs in effect on the effective date of this section, its nonmitigable costs associated with the provision of retail supply choice, including prudently incurred contract obligation costs and transition costs. For the purposes of this section, contract obligation costs are costs associated with acquiring, maintaining or terminating interstate and intrastate pipeline and storage capacity contracts, less revenues generated by mitigating such contract obligations, whether by off-system sales, capacity release, pipeline supplier refunds or otherwise; and transition costs are costs incurred by the gas utility associated with educating the public on retail supply choice and redesigning its facilities, operations and systems to permit retail supply choice;

4. Tariff provisions to balance the receipts and deliveries of gas supplies to retail supply choice customers and allocate the gas utility's gas costs so that one class of customers is not subsidized by another class of customers;

5. Tariff provisions requiring the gas utility, at a minimum, to offer gas suppliers or retail supply choice customers the right to acquire the gas utility's upstream transmission and/or storage capacity in a manner that assures that one class of customers is not subsidized by another class of customers, provided that nothing contained herein shall deny the gas utility the right to request Commission approval of such tariff provisions as are designed to ensure the safe and reliable delivery of natural gas to firm service customers on its system, including provisions requiring gas suppliers to accept assignment of upstream transportation and storage capacity, and/or allowing the gas utility to retain a portion of its upstream transportation and storage capacity to ensure safe and reliable natural gas service to its customers;

6. A code of conduct governing the activities and relationships between the gas utility and gas suppliers to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. Such codes of conduct shall incorporate or be consistent with any rule or guideline established by the Commission; and

7. Any other requirement established by Commission rule or regulation.

The Commission may, by rule or regulation, impose such additional filing requirements as it deems necessary in the public interest. The Commission may also require a gas utility to continue to serve as a gas supplier to its customers after the gas utility's plan becomes effective and under such terms and conditions as are necessary to protect the public interest.

B. After the Commission has accepted a filing as provided in subsection A, the Commission shall review and approve a plan filed by a gas utility unless it determines, after notice and an opportunity for public hearing, that the plan would:

1. Adversely affect the quality, safety, or reliability of natural gas service by the gas utility or the provision of adequate service to the gas utility's customers;

2. Result in rates charged by the gas utility that are not just and reasonable rates within the contemplation of § 56-235.2 or that are in excess of levels approved by the Commission under § 56-235.6, as the case may be;

3. Adversely affect the gas utility's customers not participating in the retail supply choice plan;

4. Unreasonably discriminate against one class of the gas utility's customers in favor of another class

(provided, however, that a gas utility's recovery of nongas fixed costs on a nonvolumetric basis shall not necessarily constitute unreasonable discrimination); or

5. Not be in the public interest.

The Commission shall, after the acceptance of a filing of a retail supply choice plan, approve or disapprove the plan within 120 days. The 120-day period may be extended by Commission order for an additional period not to exceed ~~sixty~~ *60* days. The retail supply choice plan shall be deemed approved if the Commission fails to act within 120 days or any extended period ordered by the Commission. The Commission shall approve a retail supply choice plan filed by a gas utility pursuant to this subsection regardless of whether it has promulgated rules and regulations pursuant to subsection A. The Commission may also modify a plan filed by a gas utility to ensure that it conforms to the provisions of this subsection and is otherwise in the public interest. Plans approved pursuant to this section shall not be placed into effect before July 1, 2000.

C. The Commission may, on its own motion, direct a gas utility to file a retail supply choice plan, which shall comply with subsection A, shall include such other details in the plan as the Commission may require, and does not cause the effects set forth in subsection B, or the Commission may, on its own motion, propose a plan for a gas utility for retail supply choice that complies with the requirements of subsection A and does not cause the effects set forth in subsection B. The Commission may approve any plans under this subsection after notice to all affected parties and an opportunity for hearing.

D. Once a plan becomes effective pursuant to this section, if the Commission determines, after notice and opportunity for hearing, that the plan is causing, or is reasonably likely to cause, the effects set forth in subsection B, it may order revisions to the plan to remove such effects. Any such revisions to the plan will operate prospectively only.

E. If, upon application of at least ~~twenty-five~~ *25* percent of retail supply choice customers or of 500 retail choice customers, whichever number is lesser, or by the gas utility, it is alleged that the marketplace for retail supply choice customer is not reasonably competitive or results in rates unreasonably in excess of what would otherwise be charged by the gas utility, or if the Commission renders such a determination upon its own motion, then the Commission may, after notice, and opportunity for hearing, terminate the gas utility's retail supply choice program and provide for an orderly return of the retail choice customers to the gas utility's traditional retail natural gas sales service. In such event, the gas utility shall be given the opportunity to acquire, under reasonable and competitive terms and conditions and within a reasonable time period, such upstream transportation and storage capacity as is necessary for it to provide traditional retail natural gas sales service to former retail supply choice customers.

F. Licensure of gas suppliers.

1. No person, other than a gas utility, shall engage in the business of selling natural gas to the residential and small commercial customers of a gas utility that has an approved plan implementing retail supply choice unless such person (for the purpose of this section, gas supplier) holds a license issued by the Commission. An application for a gas supplier license must be made to the Commission in writing, be verified by oath or affirmation and be in such form and contain such information as the Commission may, by rule or regulation, require. For purposes of this subsection, the Commission shall require a gas supplier to demonstrate that it has the means to provide natural gas to essential human needs customers. A gas supplier license shall be issued to any qualified applicant within ~~forty-five~~ *45* days of the date of filing such application, authorizing in whole or in part the service covered by the application, unless the Commission determines otherwise for good cause shown. A person holding such a license shall not be considered a "public service corporation," "public service company" or a "public utility" and shall not be subject to regulation as such~~; however, nothing contained herein shall be construed to affect the liability of such a person for any license tax levied pursuant to Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1~~. No license issued under this chapter shall be transferred without prior Commission approval finding that such transfer is not inconsistent with the public interest. If the Commission determines, after notice and opportunity for public hearing, that a gas supplier has failed to comply with the provisions of this subsection or the Commission's rules, regulations or orders, the Commission may enjoin, fine, or punish any such failure pursuant to the Commission's authority under this statute and under Title 12.1 of the Code of Virginia. The Commission may also suspend or revoke the gas supplier's license or take such other action as is necessary to protect the public interest.

2. The Commission shall establish rules and regulations for the implementation of this subsection, provided that:

a. The Commission's rules and regulations shall not govern the rates charged by licensed gas suppliers, except that the Commission's rules and regulations may govern the terms and conditions of service of licensed gas suppliers to protect the gas utility's customers from commercially unreasonable terms and conditions; and

b. The Commission's rules and regulations shall permit an affiliate of the gas utility to be licensed as a gas supplier and to participate in the gas utility's retail supply choice program under the same terms and conditions as gas suppliers not affiliated with the gas utility.

3. The Commission shall also have the authority to issue rules and regulations governing the marketing practices of gas suppliers.

G. Retail customers' private right of action; marketing practices.

1. No gas supplier shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing or marketing gas service.

2. Any person who suffers loss (i) as the result of fraudulent marketing practices, including telemarketing practices, engaged in by any gas supplier providing any service made competitive under this section, or of any violation of rules and regulations issued by the Commission pursuant to subdivision F 3, or (ii) as the result of any violation of subdivision 1 ~~of this subsection~~, shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater. Notwithstanding any other provisions of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorney's fees and court costs.

3. The Attorney General, the attorney for the Commonwealth or the attorney for the city, county or town may cause an action to be brought in the appropriate circuit court for relief of violations referenced in subdivision 2 ~~of this subsection~~.

4. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person or governmental agency initiating an action pursuant to this section may be awarded reasonable attorney's fees and court costs.

5. Any action pursuant to this subsection shall be commenced by persons other than the Commission within two years after its accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the Commission initiates proceedings, or any other governmental agency files suit for violations under this section, the time during which such proceeding or governmental suit and all appeals therefrom are pending shall not be counted as any part of the period within which an action under this section shall be brought.

6. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of this subsection, provided that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

7. In any case arising under this subsection, no liability shall be imposed upon any gas supplier who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subdivision 1 ~~of this subsection~~ was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subdivision 4 ~~of this subsection~~ to individuals aggrieved as a result of an unintentional violation of this subsection.

H. Authorized public utilities shall file with the Commission tariff revisions reflecting the ~~net~~ effect of the ~~elimination~~ *imposition* of taxes pursuant to ~~subsection B of~~ § 58.1-2904 ~~and the addition of state income taxes pursuant to § 58.1-400~~. Such tariffs shall be effective for service rendered on and after January 1, 2001, and shall be filed at least ~~forty-five~~ *45* days prior to the effective date. Such filing shall not constitute a rate increase for the purposes of § 56-235.4.

I. Consumer education.

1. The Commission shall develop a consumer education program designed to provide the following information to retail customers concerning retail supply choice for natural gas customers:

a. Opportunities and options in choosing natural gas suppliers;

b. Marketing and billing information gas suppliers will be required to furnish retail customers;

c. Retail customers' rights and obligations concerning the purchase of natural gas and related services; and

d. Such other information as the Commission may deem necessary and appropriate and in the public interest.

2. The consumer education program authorized herein may be conducted in conjunction with the program provided for in § 56-592.

3. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against gas utilities, public service companies, licensed suppliers and other providers of any services affected by this section. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of § 56-235.8 and to enjoin or punish any violations

thereof pursuant to its authority under § 56-235.8, this title, or Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

~~4. For all billing statements sent on and after August 1, 2000, all gas utilities, as defined in subsection A, shall enclose the following information in all billing statements for retail natural gas service:~~

~~a. Gas utilities shall separately state an approximate amount of the tax imposed under §§ 58.1-2626, 58.1-2660 and 58.1-3731 which is included in the customer's bill until such tax is no longer imposed; and~~

~~b. For all such billing statements, a statement which reads as follows shall be included: "Beginning January 1, 2001, the current state and local gross receipts taxes on sales of natural gas will be replaced by a tax based on the consumption of natural gas by consumers. In the past, the current gross receipts tax has always been included in the rate charged for natural gas. Now, this tax is being separately stated. The total gross receipts tax imposed by Virginia and the localities is approximately two percent of the amount charged to consumers. The new state and local consumption tax will be charged at an approximate rate of $0.02 per 100 cubic feet (CCF) of natural gas consumed. While this rate was designed to be less than, or equal to, the effect of the current gross receipts tax which is being replaced, the tax you pay may actually be higher in your locality. This statement is being provided for your information."~~

§ 56-264.2. Governing board of multistate entities operating certain sewage treatment facilities; arbitration of issues; condemnation of facilities.

A. As used in this section, "multistate entity" means any corporation, company, political subdivision, association, or other legal entity, without regard to whether such entity is a public utility or public service company, that engages in the provision of sewerage service to persons residing in the Commonwealth and to persons residing in an adjacent state and that operates a sewage treatment facility with a capacity of not less than five million gallons per day that is located in the Commonwealth, the construction or expansion of which treatment facility was financed primarily through the Virginia Revolving Loan Fund or a successor loan fund program administered by the Virginia Resources Authority or Department of Environmental Quality.

B. Notwithstanding any contrary provision of law, all powers of a multistate entity shall be exercised by or under the authority of, and all business and affairs of the multistate entity shall be managed under the direction of, a governing board, which may be titled a board of directors, board of trustees, or similar appellation. The governing board shall be comprised of (i) two members residing in the Commonwealth for each locality of the Commonwealth wherein the multistate entity provides sewage treatment services and (ii) a number of members residing in the adjacent state that is equal to the number of members residing in the Commonwealth. The governing body of each locality of the Commonwealth wherein the multistate entity provides sewerage services shall appoint two individuals to the board, which individuals need not be residents of such locality. The terms of members of the board residing in the Commonwealth shall expire one year following their appointment; however, despite the expiration of such a member's term, the member shall continue to serve until his successor is elected and qualifies. Unless the articles of incorporation, bylaws, charter, or other organic document of the multistate entity requires a greater number for the transaction of particular business, a quorum of the governing board shall consist of a majority of the number of members prescribed by this subsection. If a quorum is present when a vote of the governing board is taken, the affirmative vote of a majority of members present is the act of the governing board unless the articles of incorporation, bylaws, charter, or other organic document of the multistate entity requires the vote of a greater number of members. Except as provided in this section, the provisions of the articles of incorporation, bylaws, charter, or other organic document of a multistate entity in effect prior to July 1, 2006, shall continue to apply with respect to the method of appointing the board members residing in the adjacent state and the duration of their terms, and to other matters relating to the governing board of such multistate entity, except that no amendment to the articles of incorporation, bylaws, charter, or other organic document of the multistate entity that contravenes any provision of this section shall be effective.

C. Upon the filing of a petition by not fewer than one-half of the members of the governing board of a multistate entity requesting the Commission to arbitrate an issue pertaining to the management of the business and affairs of the multistate entity that requires the affirmative vote of the members, upon which issue the governing board is deadlocked, the Commission shall commence a proceeding to arbitrate the issue. The multistate entity and the nonpetitioning members of the governing board shall be parties to the proceeding. With the petition for arbitration, the petitioners shall provide all relevant documentation concerning the issue on which it is alleged that the board is deadlocked and the positions of the petitioners and the other members of the governing board with respect to the issue. The Commission shall conduct the arbitration proceeding in accordance with its Rules of Practice and

Procedure (5VAC5-20-10 et seq.). The Commission's consideration shall be limited to the issue in the petition. The Commission shall proceed promptly with the hearing and determination of the issue in controversy. The final order of the Commission shall be final and binding on the multistate entity and the governing board, unless notice of appeal to the Supreme Court is filed in the office of the Clerk of the Commission within 30 days after entry of the order appealed from, in the manner provided in the rules of the Supreme Court of Virginia. If the Commission incurs additional costs in conducting such an arbitration proceeding ~~that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660~~, the unrecoverable portion of the costs of the arbitration proceedings shall be assessed against the multistate entity.

D. If the articles of incorporation, bylaws, charter, or other organic document of a multistate entity in existence on July 1, 2006, does not comply with the requirements of subsection B by January 1, 2008, then the locality in the Commonwealth wherein the sewage treatment facility is located shall be authorized to acquire, by exercise of the power of eminent domain if the governing body of the locality deems it appropriate, the sewage treatment facility operated by the multistate entity, without regard to whether such entity is the owner of the sewage treatment facility, and any related pipelines, easements, and other property related to the provision of sewerage services that is located within the locality, for the purpose of providing sewerage services to persons residing within the Commonwealth and the Bluestone Watershed.

§ 56-265.4:4. Certificate to operate as a telephone utility.

A. The Commission may grant certificates to competing telephone companies, or any county, city or town that operates an electric distribution system, for interexchange service where it finds that such action is justified by public interest, and is in accordance with such terms, conditions, limitations, and restrictions as may be prescribed by the Commission for competitive telecommunications services. A certificate to provide interexchange services shall not authorize the holder to provide local exchange services. The Commission may grant a certificate to a carrier, or any county, city or town that operates an electric distribution system, to furnish local exchange services as provided in subsection B.

B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other interested parties and following an opportunity for hearing, the Commission may grant certificates to any telephone company, or any county, city or town that operates an electric distribution system, proposing to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a certificate under this subsection, the Commission may require that the applicant show that it possesses sufficient technical, financial, and managerial resources. Before granting any such certificate, the Commission shall: (i) consider whether such action reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission, and reasonably assures the continuation of quality local exchange telephone service; and (ii) find that such action will not unreasonably prejudice or disadvantage any class of telephone company customers or telephone service providers, including the new entrant and any incumbent local exchange telephone company, and is in the public interest. Except as provided in subsection A of § 15.2-2160, all local exchange certificates granted by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth unless the applicant specifically requests a different certificated service territory. The Commission shall amend the certificated service territory of each local exchange carrier that was previously certificated to provide service in only part of the Commonwealth to permit such carrier's provision of local exchange service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated service territory. A local exchange carrier shall only be considered an incumbent in any certificated service territory in which it was considered an incumbent prior to July 1, 2002, except that the Commission may make changes to a local exchange carrier's incumbent certificated service territory at the request of those incumbent local exchange carriers that are directly involved in a proposed change in the certificated service territory.

2. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a new entrant shall be entered no more than 180 days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90 days in all.

3. The Commission shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so as to encourage competition based on service, quality, and price differences between alternative providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; (iv) determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company

provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue received by a county, city or town for providing telecommunications services shall not be cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized pursuant to subdivision 5.

4. The Commission shall discharge the responsibilities of state commissions as set forth in the federal Telecommunications Act of 1996 (P.L. 104-104) (the Act) and applicable law and regulations, including, but not limited to, the arbitration of interconnection agreements between local exchange carriers; however, the Commission may exercise its discretion to defer selected issues under the Act. If the Commission incurs additional costs in arbitrating such agreements or resolving related legal actions or disputes ~~that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660~~, that levy shall be increased above the levy authorized by that section to the extent necessary to recover such additional costs.

5. Upon the Commission's granting of a certificate to a county, city or town under this section, such county, city, or town (i) shall be subject to regulation by the Commission for intrastate telecommunications services, (ii) shall have the same duties and obligations as other certificated providers of telecommunications services, (iii) shall separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such services, and (iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that (a) does not include any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications services regulated by the Commission shall file an annual report with the Commission demonstrating that the requirements of clauses (iii) and (iv) have been met. The Commission may approve a subsidy under this section if deemed to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price for the same service charged by the incumbent provider in the area.

6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any franchise fees and other state and local fees (including permit fees and pole rental fees), and right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider of telecommunications services, (iv) prepare and publish annually financial statements in accordance with generally accepted accounting principles showing the results of operations of its provision of telecommunications services, and (v) maintain records demonstrating compliance with the provisions of this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

7. Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the locality unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

8. The prices charged and the revenue received by a locality for providing telecommunications services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as permitted by the provisions of subdivision 5. The provisions of this subdivision shall not apply to Internet access, broadband, information, and data transmission services provided by any locality providing telecommunications services on March 1, 2002, except for an authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

9. The Commission shall promulgate rules necessary to implement this section. In no event, however, shall the rules necessary to implement clauses (iii) and (iv) of subdivision 5, clauses (ii) through (v) of subdivision 6, and subdivision 8 impose any obligations on a locality that has obtained a certificate pursuant to this section, but is not yet providing telecommunications services regulated by the Commission.

10. Public records of a locality that has obtained a certificate pursuant to this section, which records

contain confidential proprietary information or trade secrets pertaining to the provision of telecommunications service, shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of telecommunications services would provide the competing provider with a competitive benefit. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 shall not apply to a county, city, or town that has obtained a certificate pursuant to this section.

D. Any county, city, or town that has obtained a certificate pursuant to this section may construct, own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with Internet services, data transmission services, and any other communications service that its infrastructure is capable of delivering; provided, however, nothing in this subsection shall authorize the provision of cable television services or other multi-channel video programming service. Furthermore, nothing in this subsection shall alter the authority of the Commission.

E. Any county, city, or town that has obtained a certificate pursuant to this section and that had installed a cable television headend prior to December 31, 2002, is authorized to own and operate a cable television system or other multi-channel video programming service and shall be exempt from the provisions of §§ 15.2-2108.4 through 15.2-2108.8. Nothing in this subsection shall authorize the Commission to regulate cable television service.

§ 56-482.1. Reports required of interexchange telephone companies.

Each interexchange telephone company shall provide to the Commission in a timely manner any report or information concerning its usage of local exchange telephone services and facilities required under the effective access charge tariffs or schedules of a local exchange telephone company. The Commission shall prescribe rules and regulations to effectuate the purpose of this section. The requirement to provide any reports pursuant to such rules and regulations~~, other than reports required by the Commission to calculate the special revenue tax imposed under § 58.1-2660,~~ shall expire on December 31 of each year unless extended by an order of the Commission issued after notice and an opportunity for a hearing.

§ 56-592.1. Consumer education program; scope and funding.

A. The Commission shall establish and implement the consumer education program developed pursuant to subsection A of § 56-592. In establishing such a program, the Commission shall take into account the findings and recommendations of the subgroup on Information/Consumer Education that was established in conjunction with the Commission's proceeding in Case PUE-2007-00049, that implemented the third enactment of Chapters 888 and 933 of the Acts of Assembly of 2007.

B. The program shall be designed to (i) enable consumers to make rational and informed choices about the matters described in subsection A of § 56-592, including but not limited to demand side management, energy conservation, and energy efficiency, (ii) help consumers reduce transaction costs in making decisions regarding such matters, and (iii) foster compliance with the consumer protection provisions of this chapter.

C. The Commission shall regularly consult with representatives of consumer organizations, community-based groups, state agencies, incumbent utilities, and other interested parties throughout the program's implementation and operation.

D. Pursuant to the provisions of § 30-205, the Commission shall provide periodic updates to the Commission on Electric Utility Regulation concerning the program's implementation and operation.

E. The Commission shall fund the establishment and operation of such consumer education program through ~~the special regulatory revenue tax currently authorized by § 58.1-2660 and~~ the special regulatory tax authorized by Chapter 29 (§ 58.1-2900 et seq.) of Title 58.1.

§ 58.1-339.2. Historic rehabilitation tax credit.

A. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); *and* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~; and Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~, in accordance with the following schedule:

Year	% of Eligible Expenses
1997	10%
1998	15%
1999	20%
2000 and thereafter	25%

If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxes of such taxpayer in the next ~~ten~~

10 taxable years or until the full credit is used, whichever occurs first. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Director of the Department of Historic Resources.

B. Effective for taxable years beginning on and after January 1, 2000, any individual, trust, estate, or corporation resident in Virginia that incurs eligible expenses in the rehabilitation of a certified historic structure in any other state that has in effect a reciprocal historic structure rehabilitation tax credit program and agreement for residents of that state who rehabilitate historic structures in Virginia shall be entitled to a credit to the same extent as provided in subsection A and other applicable provisions of law; however, no eligible party shall receive any credit authorized under this subsection prior to taxable years beginning on and after January 1, 2002.

C. 1. To claim the credit authorized under this section, the taxpayer shall apply to the Virginia Department of Historic Resources, which shall determine the amount of eligible rehabilitation expenses and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

2. For taxable years beginning on and after January 1, 2017, the amount of the credit that may be claimed by each taxpayer, including amounts carried over from prior taxable years, shall not exceed $5 million in any taxable year.

D. When used in this section:

"Certified historic structure" means a property listed individually on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks Register or certified by the Director of the Virginia Department of Historic Resources as meeting the criteria for listing on the Virginia Landmarks Register.

"Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property's capital account.

"Material rehabilitation" means improvements or reconstruction consistent with "The Secretary of the Interior's Standards for Rehabilitation," the cost of which amounts to at least ~~fifty~~ *50* percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which case the cost shall amount to at least ~~twenty-five~~ *25* percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses.

"Owner-occupied building" means any building that is used as a personal residence by the owner.

E. The Director of the Department of Historic Resources shall establish by regulation the requirements needed for this program, including the fees to defray necessary expenses thereof, and, except as otherwise prohibited by this section, the extent to which the availability of the credit provided by this section is coextensive with the availability of the federal tax credit for the rehabilitation of certified historic resources.

F. Any gain or income under federal law from the allocation or application of a tax credit under this section shall not be (i) taxable gain or income for purposes of the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.), (ii) taxable gain or income for purposes of the tax imposed pursuant to Article 6 (§ 58.1-360 et seq.), or (iii) taxable gain or income for purposes of the tax imposed pursuant to Article 10 (§ 58.1-400 et seq.). However, nothing in this subsection shall be construed or interpreted as allowing a subtraction or deduction for such gain or income under federal law if the gain or income is otherwise excluded, deducted, or subtracted in computing the respective tax set forth under clauses (i) through (iii).

§ 58.1-400.1. Exemption of telecommunications companies.

A. A telecommunications company that is incorporated shall be ~~subject to a minimum tax, instead of the corporate income tax imposed by § 58.1-400, at the applicable rate on its gross receipts for the calendar year which ends during the taxable year if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this section~~ *exempt from any tax imposed under this article*. ~~A telecommunications company that is organized as a limited liability company, partnership, corporation that has made an election under subchapter S of the Internal Revenue Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner prescribed by regulation.~~

~~The minimum tax shall be imposed at the rate of 0.5 percent of gross receipts.~~

B. ~~In the case of an income tax return for a period of less than twelve months, the minimum tax shall be based on the gross receipts for the calendar year which ends during the taxable period or, if none, the most recent calendar year which ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.~~

~~C.~~ The State Corporation Commission shall certify to the Department for each tax year as defined in § 58.1-2600 the name~~,~~ *and* address~~, and gross receipts~~ for each telecommunications company. The Commission shall mail or otherwise deliver a copy of the certification to each affected telecommunications company.

~~D. The following words and terms, when used in this section, shall have the following meanings:~~

~~"Gross receipts" means all revenue from business done within the Commonwealth, including the proportionate part of interstate revenue attributable to the Commonwealth if such inclusion will result in annual gross receipts exceeding $5 million, with the following deductions:~~

~~1. Revenue billed on behalf of another such telephone company or person to the extent such revenues are later paid over to or settled with that company or person; and~~

~~2. Revenues received from a telecommunications company, or from a telephone utility company providing interstate communications service, for providing to the company any of the following: (i) unbundled network facilities, (ii) completion, origination or interconnection of telephone calls with the taxpayer's network, (iii) transport of telephone calls over taxpayer's network, or (iv) taxpayer's telephone services for resale.~~

~~"Telecommunications~~ *C. As used in this section, "telecommunications* company" means a telephone company or other person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a person authorized by the Federal Communications Commission to provide commercial mobile service as defined in § 332(d)(1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a telegraph company or other person operating the apparatus necessary to communicate by telegraph. The term "affiliated group" shall have the meaning given in § 58.1-3700.1.

§ 58.1-400.2. Exemption of electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers.

A. Any electric supplier, pipeline distribution company, gas utility, or gas supplier that is subject to income tax pursuant to the Internal Revenue Code of 1986, as amended, except those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be ~~subject to the tax levied pursuant to § 58.1-400~~ *exempt from any tax imposed under this article*.

B. ~~Any electric supplier that operates as a cooperative and is exempt from income tax pursuant to § 501 of the Internal Revenue Code of 1986, shall be subject to tax at the tax rate set forth in § 58.1-400 on all modified net income derived from nonmember sales. Any gas supplier, pipeline distribution company or gas utility which has a taxable year that begins after January 1, 2001, but before January 1, 2002, shall also be subject to the provisions under subsection E.~~

~~C. The following words and terms when~~ *As* used in this section ~~shall have the following meanings~~:

"Electric supplier" means any corporation, cooperative, partnership or other business entity providing electric service.

~~"Electricity" is deemed tangible personal property for purposes of the corporate income tax pursuant to this article.~~

"Gas supplier" means any person licensed by the State Corporation Commission to engage in the business of selling natural gas.

"Gas utility" has the same meaning as provided in § 56-235.8.

~~"Members" means those customers of a cooperative who receive allocations of patronage capital from a cooperative.~~

~~"Modified net income" means all revenue of a cooperative from the sale of electricity within the Commonwealth with the following subtractions:~~

~~1. Revenue attributable to sales of electric power to its members.~~

~~2. Nonmember share of all ordinary and necessary expenses paid or incurred during the taxable year in carrying on the sale of electric power to nonmembers. Such nonmember expenses shall be determined by allocating the amount of such expenses between sales of electricity to members and sales of electricity to nonmembers. Such allocation shall be applicable to all tax credits available to an electric supplier.~~

~~"Nonmember" means those customers which are not members.~~

~~"Ordinary and necessary expenses paid or incurred" means ordinary and necessary expenses determined according to generally accepted accounting principles.~~

"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

~~D. The Department of Taxation shall promulgate all regulations necessary to implement the intent of this section. This section shall apply to taxable years beginning on and after January 1, 2001.~~

E. 1. Any gas supplier, pipeline distribution company or gas utility which has a taxable year that begins after January 1, 2001, but before January 1, 2002, shall be required to file an income tax return as if a short taxable year has occurred covering the period beginning January 1, 2001, and ending on the last day prior to the beginning of the gas supplier's, pipeline distribution company's or gas utility's taxable year pursuant to § 58.1-440 A.

2. If a return is required to be made under subdivision 1 of this subsection, federal taxable income will be determined using the methodology prescribed in § 443 of the Internal Revenue Code, as if the gas supplier, pipeline distribution company or gas utility was undergoing a change of annual accounting period, and § 58.1-440 B and the regulations thereunder.

§ 58.1-400.3. Exemption of certain electric suppliers.

A. 1. An electric supplier, except for those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax imposed by this section, instead of the corporate income tax imposed by § 58.1-400 if applicable, net of any income tax credits that may be used to offset such tax, if the tax imposed by § 58.1-400 is less than the minimum tax imposed by this subsection *exempt from any tax imposed under this article*. An electric supplier that is organized as a limited liability, partnership, corporation that has made an election under subchapter S of the Internal Revenue Code, or other entity treated as a pass-through entity shall be subject to the minimum tax in the manner prescribed by regulation.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts for the calendar year that ends during the taxable year minus the state's portion of the electric utility consumption tax billed to consumers.

B. 1. An electric supplier that is organized as a cooperative and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to a minimum tax, instead of the tax on modified net income imposed by § 58.1-400.2, if the tax imposed by § 58.1-400.2, net of any credits that may be used to offset such tax, is less than the minimum tax imposed by this subsection.

2. The minimum tax imposed by this subsection shall be equal to 1.45 percent of such electric supplier's gross receipts from sales to nonmembers for the calendar year that ends during the taxable year minus the consumption tax collected from nonmembers.

C. In the case of an income tax return for a period of less than 12 months, the minimum tax shall be based on the gross receipts for the calendar year that ends during the taxable period or, if none, the most recent calendar year that ended before the taxable period. The minimum tax shall be prorated by the number of months in the taxable period.

D. *B.* The State Corporation Commission shall calculate and certify to the Department for each tax year as defined in § 58.1-2600 the name, *and* address, and minimum tax for each electric supplier. The Commission shall mail or otherwise deliver a copy of the certification to each affected electric supplier.

E. When an electric supplier subject to the tax imposed by this section is one of several affiliated corporations that file a consolidated or combined income tax return, the portion of the affiliated corporations' tax liability that is attributable to the electric supplier shall be computed as follows:

1. Each corporation included in the consolidated or combined return shall recompute its corporate income tax liability, net of any income tax credits, as if it were filing a separate return. The separate income tax liability of the electric supplier shall then be compared to the affiliated corporations' tax liability, net of any income tax credits, indicated on the consolidated or combined return. For purposes of this section, the lesser amount shall be deemed to be the corporate income tax imposed by § 58.1-400 and attributable to the electric supplier.

2. a. If such corporate income tax amount is less than the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall be subject to the minimum tax in lieu of the corporate income tax imposed by § 58.1-400.

b. If such corporate income tax amount exceeds the minimum tax of the electric supplier as calculated pursuant to subsection A, the electric supplier shall not owe the minimum tax.

F. The requirements imposed under Article 20 (§ 58.1-500 et seq.) of Chapter 3 of this title regarding the filing of a declaration of estimated income taxes and the payment of such estimated taxes, shall be applicable to electric suppliers regardless of whether such taxpayer expects to be subject to the minimum tax imposed herein or to the corporate income tax imposed by § 58.1-400.

For purposes of determining the applicability of the exceptions under which the addition to the tax for the underpayment of any installment of estimated taxes shall not be imposed, it shall be irrelevant whether the tax shown on the return for the preceding taxable year is the corporate income tax or the minimum tax.

G. To the extent that a taxpayer is subject to the minimum tax imposed under this section, there shall be allowed a credit against the separate, combined, or consolidated corporate income tax for the total amount of minimum tax paid by the electric supplier in all previous years that is in excess of the

tax imposed by § 58.1-400 on the electric supplier for such years.

H. 1. To the extent an electric supplier or its parent company has remitted estimated income tax payments in excess of its corporate income tax liability for the taxable years beginning on or after January 1, 2001, but before January 1, 2004, such overpayments shall only be utilized to offset any corporate income tax liabilities incurred pursuant to § 58.1-400 for taxable years beginning on and after January 1, 2004, and shall not be claimed as a refund of overpaid taxes, except as provided in subdivision 2 of this subsection. For the purposes of this subsection, estimated income tax payments shall include any overpayments from a prior taxable year carried forward as an estimated payment to be credited towards a future tax liability.

2. If an electric supplier has had a corporate income tax liability of greater than $0 for each taxable year beginning on or after January 1, 2001, but before January 1, 2003, then such electric supplier may claim a refund of any estimated income tax payments in excess of their taxable year 2003 corporate income tax liability.

I. Every electric supplier which owes the minimum tax imposed by this section shall remit such tax payment to the Department of Taxation.

J. Notwithstanding any of the foregoing provisions, an electric supplier may not adjust capped rates pursuant to § 56-582 of the Code of Virginia on any portion of the minimum tax due to the Commonwealth.

K. *C.*The following words and terms, for purposes of this section, shall have the following meanings *As used in this section*:

"Consumption tax" means the state's portion of the electric utility consumption tax billed pursuant to Chapter 29 (§ 58.1-2900 et seq.) of this title, for which the electric supplier is defined as the "service provider" pursuant to § 58.1-2901 less any amounts billed on behalf of utilities owned and operated by municipalities.

"Electric supplier" means an incumbent electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the State Corporation Commission.

"Gross receipts" has the same meaning as defined in § 58.1-2600 less receipts from sales to federal, state and local governments for their own use.

"Nonmember" has the same meaning as defined in § 58.1-400.2.

§ 58.1-401. Exemptions and exclusions.

No tax levied pursuant to § 58.1-400, 58.1-400.1 or 58.1-400.2 is imposed on:

1. A public service corporation to the extent such corporation is subject to the license tax on gross receipts contained in Chapter 26 (§ 58.1-2600 et seq.) of this title;

2. Insurance companies to the extent such company is subject to the license tax on gross premiums under Chapter 25 (§ 58.1-2500 et seq.) of this title and reciprocal or interinsurance exchanges which pay a premium tax to the Commonwealth as provided by law;

3. State and national banks, banking associations and trust companies to the extent such companies are subject to the bank franchise tax on net capital;

3a. Credit unions organized and conducted as such under the laws of the Commonwealth or under the laws of the United States;

4. Electing small business corporations (S corporations);

5. Religious, educational, benevolent and other corporations not organized or conducted for pecuniary profit which by reason of their purposes or activities are exempt from income tax under the laws of the United States, except those organizations which have unrelated business income or other taxable income under such laws, except as provided in § 58.1-400.2;

6. Telephone companies chartered in the Commonwealth which are exclusively a local mutual association and are not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof;

7. A corporation that has contracted with a commercial printer for printing and that is not otherwise taxable shall not become taxable by reason of: (i) the ownership or leasing by that corporation of tangible personal property located at the Virginia premises of the commercial printer and used solely in connection with the printing contract with such person; (ii) the sale by that corporation at another location of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer; (iii) the activities in connection with the printing contract with such person of any kind performed by or on behalf of that corporation at the Virginia premises of the commercial printer; and (iv) the activities in connection with the printing contract with such person performed by the commercial printer for or on behalf of that corporation;

8. Foreign sales corporations (FSC) and any income attributable to an FSC under the rules relating to the taxation of an FSC in Part III, Subpart C of the Internal Revenue Code (§ 921 et seq.) and the regulations thereunder; and

9. For taxable years beginning on or after January 1, 2014, domestic international sales corporations

(DISC) under the rules relating to the taxation of a DISC in Part IV, Subpart A of the Internal Revenue Code (§ 991 et seq.) and the regulations thereunder.

§ 58.1-402. Virginia taxable income.

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

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

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

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

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

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

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

6. [Repealed.]

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

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

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

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

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

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

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is

satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and costs without making the adjustment under subdivision a.

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

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

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

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

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

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

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

(4) One of the following applies:

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

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

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

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

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

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member

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

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

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

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

d. For purposes of subdivision B 9:

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

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

10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT). For purposes of this subdivision, a REIT is a Captive REIT if:

(1) It is not regularly traded on an established securities market;

(2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal Revenue Code; and

(3) More than 25 percent of its income consists of rents from real property as defined in § 856(d) of the Internal Revenue Code.

b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:

(1) Any REIT that is not treated as a Captive REIT;

(2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;

(3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and

(4) Any Qualified Foreign Entity.

c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

d. For purposes of subdivision B 10:

"Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market.

"Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:

(1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities;

(2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax;

(3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;

(4) The shares or certificates of beneficial interest of such entity are regularly traded on an established securities market or, if not so traded, not more than 10 percent of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual; and

(5) The entity is organized in a country that has a tax treaty with the United States.

e. For taxable years beginning on or after January 1, 2016, for purposes of subdivision B 10, any voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset account of a life insurance corporation as described in § 817 of the Internal Revenue Code shall not be taken into consideration when determining if such REIT is a Captive REIT.

11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

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

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

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

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

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

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

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

7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F income) or, for taxable years beginning on and after January 1, 2018, § 951A of the Internal Revenue Code (Global Intangible Low-Taxed Income).

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

9. [Repealed.]

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

11. [Repealed.]

12, 13. [Expired.]

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

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

16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real

property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

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

18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

19, 20. [Repealed.]

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

22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

23. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal office or facility in the Commonwealth and less than $3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment must be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

25. a. Income, including investment services partnership interest income (otherwise known as investment partnership carried interest income), attributable to an investment in a Virginia venture capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 for the same investment.

b. As used in this subdivision 25:

"Qualified portfolio company" means a company that (i) has its principal place of business in the Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or service other than the management or investment of capital; and (iii) provides equity in the company to the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not include a company that is an individual or sole proprietorship.

"Virginia venture capital account" means an investment fund that has been certified by the Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study. The Department may require an investment fund to provide documentation of the investor's training, education, or experience as deemed necessary by the Department to determine

substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

26. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 or 25 for the same investment.

b. As used in this subdivision 26:

"Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of § 2.2-115.

"Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of § 2.2-115.

"Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

27. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of real property by condemnation proceedings.

D. For taxable years beginning on and after January 1, 2006, there shall be subtracted from federal taxable income contract payments to a producer of quota tobacco or a tobacco quota holder as provided under the American Jobs Creation Act of 2004 (P.L. 108-357) as follows:

1. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

2. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

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

F. Notwithstanding any other provision of law, the income from any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

G. For taxable years beginning on and after January 1, 2018, there shall be deducted to the extent included in and not otherwise subtracted from federal taxable income 20 percent of business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this subsection, "business interest" means the same as that term is defined under § 163(j) of the Internal Revenue Code.

§ 58.1-403. Additional modifications to determine Virginia taxable income for certain corporations.

In addition to the modifications set forth in § 58.1-402 for determining Virginia taxable income for corporations generally, the adjustments set forth in subdivision 1 shall be made to the federal taxable income for savings institutions and as set forth in subdivisions 2 and 3 for railway companies~~, as set forth in subdivisions 6 and 7 for telecommunications companies, and as set forth in subdivisions 8 and 9 for gas suppliers, pipeline distribution companies and gas utilities~~.

1. There shall be added the deduction allowed for bad debts. The percentage which would have been used in determining the bad debt deduction under the Internal Revenue Code of 1954, as in effect

immediately prior to the enactment of the Tax Reform Act of 1986 (Public Law 99-514), shall then be applied to federal taxable income as adjusted under the provisions of § 58.1-402 and the amount so determined subtracted therefrom.

2. There shall be added to federal taxable income any amount which was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 1978.

3. Where such railway company would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 1978, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1979, there shall be added to federal taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss carryover in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

~~4., 5. [Repealed.]~~

~~6. There shall be added to federal taxable income any amount which was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 1988.~~

~~7. Where such telecommunications company would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 1988, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1989, there shall be added to federal taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.~~

~~8. There shall be added to federal taxable income any amount that was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 2000.~~

~~9. Where such gas supplier, pipeline distribution company or gas utility would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 2000, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 2001, there shall be added to federal taxable income any amount that was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount that could have been deducted as a net operating loss carryover or net capital loss in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.~~

§ 58.1-433.1. Virginia coal employment and production incentive tax credit.

A. For taxable years beginning on and after January 1, 2001, every electricity generator in the Commonwealth shall be allowed a ~~three-dollar-per-ton~~ *$3-per-ton* credit against the tax imposed by § 58.1-400 ~~or § 58.1-400.2~~ for each ton of coal purchased and consumed by such electricity generator, provided such coal was mined in Virginia as certified by such seller. Notwithstanding any other provision of law, no electricity generator shall be allowed more than a ~~three-dollar-per-ton~~ *$3-per-ton* coal tax credit ~~and shall be subject to all limitations set forth in § 58.1-400.2~~. In no event shall the credit allowed hereunder exceed the total amount of tax liability of such taxpayer. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next 10 succeeding taxable years or until the full credit is utilized, whichever is sooner. For the purposes of the credit provided by this section, "electricity generator" means any person who produces electricity for self-consumption or for sale.

B. For each such ton of coal described in subsection A that is purchased on or after January 1, 2006, from any person with an economic interest in coal as defined under § 58.1-439.2, the $3-per-ton credit allowed under subsection A may be allocated between such electricity generator and such person with an economic interest in coal. The allocation of the $3-per-ton credit may be provided in the contract between such parties for the sale of such coal. Such allocation may be amended by the execution of a written instrument by the parties prior to December 31 of the year of purchase of such coal. Such contracts and written instruments shall be subject to audit by the Department of Taxation to ensure the proper application of credits.

In no case shall the credit allocated for each such ton of coal among such electricity generators and

such persons with an economic interest in coal exceed $3 per ton.

All credits earned on or after January 1, 2006, which are allocated to persons with an economic interest in coal as provided under this subsection may be used as tax credits by such persons against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth. If the credits earned on or after January 1, 2006 exceed the state tax liability for the applicable taxable year of such person with an economic interest in coal, the excess shall be redeemable by the Tax Commissioner as set forth in subsection D of § 58.1-439.2, provided that the ability of persons with an economic interest in coal to redeem with the Tax Commissioner credits received pursuant to an allocation under this section shall expire for credits earned under this section on or after July 1, 2016.

§ 58.1-439. Major business facility job tax credit.

A. For taxable years beginning on and after January 1, 1995, but before July 1, 2022, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~ as set forth in this section.

B. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A "major business facility" is a company that satisfies the following criteria:

1. Subject to the provisions of subsections K or L, the establishment or expansion of the company shall result in the creation of at least 50 jobs for qualified full-time employees; the first such 50 jobs shall be referred to as the "threshold amount"; and

2. The company is engaged in any business in the Commonwealth, except a retail trade business if such trade is the principal activity of an individual facility in the Commonwealth. Examples of types of major business facilities that are eligible for the credit provided under this section include, but are not limited to, a headquarters, or portion of such a facility, where company employees are physically employed, and where the majority of the company's financial, personnel, legal or planning functions are handled either on a regional or national basis. A company primarily engaged in the Commonwealth in the business of manufacturing or mining; agriculture, forestry or fishing; *or* transportation or communications~~; or a public utility subject to the corporation income tax~~ shall be deemed to have established or expanded a major business facility in the Commonwealth if it meets the requirements of subdivision 1 during a single taxable year and such facilities are not retail establishments. A major business facility shall also include facilities that perform central management or administrative activities, whether operated as a separate trade or business, or as a separate support operation of another business. Central management or administrative activities include, but are not limited to, general management; accounting; computing; tabulating; purchasing; transportation or shipping; engineering and systems planning; advertising; technical sales and support operations; central administrative offices and warehouses; research, development and testing laboratories; computer-programming, data-processing and other computer-related services facilities; and legal, financial, insurance, and real estate services. The terms used in this subdivision to refer to various types of businesses shall have the same meanings as those terms are commonly defined in the Standard Industrial Classification Manual.

D. For purposes of this section, the "credit year" is the first taxable year following the taxable year in which the major business facility commenced or expanded operations.

E. The Department of Taxation shall make all determinations as to the classification of a major business facility in accordance with the provisions of this section.

F. A "qualified full-time employee" means an employee filling a new, permanent full-time position in a major business facility in the Commonwealth. A "new, permanent full-time position" is a job of an indefinite duration, created by the company as a result of the establishment or expansion of a major business facility in the Commonwealth, requiring a minimum of 35 hours of an employee's time a week for the entire normal year of the company's operations, which "normal year" shall consist of at least 48 weeks, or a position of indefinite duration which requires a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the major business facility in the Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in the Commonwealth to the new major business facility and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal activities performed by the employees at a major business facility shall not qualify as new, permanent full-time positions.

G. For any major business facility, the amount of credit earned pursuant to this section shall be equal to $1,000 per qualified full-time employee, over the threshold amount, employed during the credit year. The credit shall be allowed ratably, with one-third of the credit amount allowed annually for three years beginning with the credit year. However, for taxable years beginning on or after January 1, 2009,

one-half of the credit amount shall be allowed each year for two years. The portion of the $1,000 credit earned with respect to any qualified full-time employee who is employed in the Commonwealth for less than 12 full months during the credit year will be determined by multiplying the credit amount by a fraction, the numerator of which is the number of full months that the qualified full-time employee worked for the major business facility in the Commonwealth during the credit year, and the denominator of which is 12. A separate credit year and a three-year allowance period shall exist for each distinct major business facility of a single taxpayer, except for credits allowed for taxable years beginning on or after January 1, 2009, when a two-year allowance period shall exist for each distinct major business facility of a single taxpayer.

H. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year the credit was allowed may be, to the extent usable, carried over for the next 10 succeeding taxable years. No credit shall be carried back to a preceding taxable year. In the event that a taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

I. No credit shall be earned pursuant to this section for any employee (i) for whom a credit under this section was previously earned by a related party as defined by Internal Revenue Code § 267(b) or a trade or business under common control as defined by Internal Revenue Code § 52(b); (ii) who was previously employed in the same job function in Virginia by a related party as defined by Internal Revenue Code § 267(b) or a trade or business under common control as defined by Internal Revenue Code § 52(b); (iii) whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iv) whose job function previously qualified for a credit under this section at a different major business facility on behalf of the taxpayer, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b).

J. Subject to the provisions of subsections K or L, recapture of this credit, under the following circumstances, shall be accomplished by increasing the tax in any of the five years succeeding the taxable year in which a credit has been earned pursuant to this section if the number of qualified full-time employees decreases below the average number of qualified full-time employees employed during the credit year. Such tax increase amount shall be determined by (i) recomputing the credit which would have been earned for the original credit year using the decreased number of qualified full-time employees and (ii) subtracting such recomputed credit from the amount of credit previously earned. In the event that the average number of qualifying full-time employees employed at a major business facility falls below the threshold amount in any of the five taxable years succeeding the credit year, all credits earned with respect to such major business facility shall be recaptured. No credit amount will be recaptured more than once pursuant to this subsection. Any recapture pursuant to this section shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability may be increased.

K. In the event that a major business facility is located in an economically distressed area or in an enterprise zone as defined in Chapter 49 (§ 59.1-538 et seq.) of Title 59.1 during a credit year, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 50 to 25 for purposes of subdivision C 1 and subsection J. An area shall qualify as economically distressed if it is a city or county with an unemployment rate for the preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all economically distressed areas at least annually.

L. For taxable years beginning on or after January 1, 2004, but before January 1, 2006, in the event that a major business facility is located in a severely economically distressed area, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 100 to 25 for purposes of subdivision C 1 and subsection J. However, the total amount of credit allowable under this subsection shall not exceed $100,000 in aggregate. An area shall qualify as severely economically distressed if it is a city or county with an unemployment rate for the preceding year of at least twice the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all severely economically distressed areas at least annually.

M. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), relating to (i) the computation, carryover, and recapture of the credit

provided under this section; (ii) defining criteria for (a) a major business facility, (b) qualifying full-time employees at such facility, and (c) economically distressed areas; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies pursuant to subsection S.

N. The provisions of this section shall apply only in instances where an announcement of intent to establish or expand a major business facility is made on or after January 1, 1994. An announcement of intent to establish or expand a major business facility includes, but is not limited to, a press conference or extensive press coverage, providing information with respect to the impact of the project on the economy of the area where the major business facility is to be established or expanded and the Commonwealth as a whole.

O. The credit allowed pursuant to this section shall be granted to the person who pays taxes for the qualified full-time employees pursuant to Chapter 5 (§ 60.2-500 et seq.) of Title 60.2.

P. No person shall claim a credit allowed pursuant to this section and the credit allowed pursuant to § 58.1-439.2. Any qualified business firm receiving an enterprise zone job creation grant under § 59.1-547 shall not be eligible to receive a major business facility job tax credit pursuant to this section for any job used to qualify for the enterprise zone job creation grant.

Q. No person operating a business in the Commonwealth pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 shall claim a credit pursuant to this section.

R. Notwithstanding subsection O, a taxpayer may, for the purpose of determining the number of qualified full-time employees at a major business facility, include the employees of a contractor or a subcontractor if such employees are permanently assigned to the taxpayer's major business facility. If the taxpayer includes the employees of a contractor or subcontractor in its total of qualified full-time employees, it shall enter into a contractual agreement with the contractor or subcontractor prohibiting the contractor or subcontractor from also claiming these employees in order to receive a credit given under this section. The taxpayer shall provide evidence satisfactory to the Department of Taxation that it has entered into such a contract.

S. For purposes of satisfying the criteria of subdivision C 1, two or more affiliated companies may elect to aggregate the number of jobs created for qualified full-time employees as the result of the establishment or expansion by the individual companies in order to qualify for the credit allowed pursuant to this section. For purposes of this subsection, "affiliated companies" means two or more companies related to each other such that (i) one company owns at least 80 percent of the voting power of the other or others or (ii) at least 80 percent of the voting power of two or more companies is owned by the same interests.

T. The General Assembly of Virginia finds that modern business infrastructure allows businesses to locate their administrative or manufacturing facilities with minimal regard to the location of markets or the transportation of raw materials and finished goods, and that the economic vitality of the Commonwealth would be enhanced if such facilities were established in Virginia. Accordingly, the provisions of this section targeting the credit to major business facilities and limiting the credit to those companies which establish a major business facility in Virginia are integral to the purpose of the credit earned pursuant to this section and shall not be deemed severable.

U. For taxable years beginning on and after January 1, 2019, and notwithstanding the provisions of § 58.1-3 or any other provision of law, the Department of Taxation, in consultation with the Virginia Economic Development Partnership, shall publish the following information by November 1 of each year for the 12-month period ending on the preceding December 31:

1. The location of sites used for major business facilities for which a credit was claimed;

2. The North American Industry Classification System codes used for the major business facilities for which a credit was claimed;

3. The number of qualified full time employees for whom a credit was claimed; and

4. The total cost to the Commonwealth's general fund of the credits claimed.

Such information shall be published by the Department, regardless of how few taxpayers claimed the tax credit, in a manner that prevents the identification of particular taxpayers, reports, returns, or items.

§ 58.1-439.6. Worker retraining tax credit.

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

"Eligible worker retraining" means retraining of a qualified employee that promotes economic development in the form of (i) noncredit courses at any of the Commonwealth's comprehensive community colleges or a private school or (ii) worker retraining programs undertaken through an apprenticeship agreement approved by the Commissioner of Labor and Industry.

"Manufacturing" means processing, manufacturing, refining, mining, or converting products for sale or resale.

"Qualified employee" means an employee of an employer eligible for a credit under this section in a full-time position requiring a minimum of 1,680 hours in the entire normal year of the employer's operations if the standard fringe benefits are paid by the employer for the employee. Employees in seasonal or temporary positions shall not qualify as qualified employees. A qualified employee (i) shall

not be a relative of any owner or the employer claiming the credit and (ii) shall not own, directly or indirectly, more than five percent in value of the outstanding stock of a corporation claiming the credit. As used herein, "relative" means a spouse, child, grandchild, parent or sibling of an owner or employer, and "owner" means, in the case of a corporation, any person who owns five percent or more of the corporation's stock.

"STEM or STEAM discipline" means a science, technology, engineering, mathematics, or applied mathematics related discipline as certified by the Virginia Economic Development Partnership Authority in consultation with the Superintendent of Public Instruction. The term shall include a health care-related discipline.

B. 1. For taxable years beginning on and after January 1, 1999, but prior to January 1, 2019, an employer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~ in an amount equal to 30 percent of all expenditures paid or incurred by the employer during the taxable year for eligible worker retraining. For taxable years beginning on or after January 1, 2013, but prior to January 1, 2019, if the eligible worker retraining consists of courses conducted at a private school, the credit shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not exceed $200 per qualified employee annually, or $300 per qualified employee annually if the eligible worker retraining includes retraining in a STEM or STEAM discipline, including but not limited to industry-recognized credentials, certificates, and certifications.

2. For taxable years beginning on and after January 1, 2018, but prior to January 1, 2019, a business primarily engaged in manufacturing shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) in an amount equal to 35 percent of its direct costs incurred during the taxable year in conducting orientation, instruction, and training in the Commonwealth relating to the manufacturing activities undertaken by the business. In no event shall the credit allowed to a business under this subdivision exceed $2,000 for any taxable year. The Department shall allow credit only for programs that (i) provide orientation, instruction, and training solely to students in grades six through 12; (ii) are coordinated with the local school division; and (iii) are conducted either at a plant or facility owned, leased, rented, or otherwise used by the business or at a public middle or high school in Virginia. The taxpayer shall include in its direct costs only the following expenditures: (a) salaries or wages paid to instructors and trainers, prorated for the period of instruction or training; (b) costs for orientation, instruction, and training materials; (c) amounts paid for machinery and equipment used primarily for such instruction and training; and (d) the cost of leased or rented space used primarily for conducting the program.

3. The total amount of tax credits granted under this section for each fiscal year shall not exceed $1 million.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. 1. An employer shall be allowed a credit pursuant to subdivision B 1 only for those courses at a comprehensive community college or a private school for which courses have been certified as eligible worker retraining to the Department of Taxation by the Virginia Economic Development Partnership Authority. The Virginia Economic Development Partnership Authority shall review requests for certification submitted by employers and shall advise the Tax Commissioner whether a course or program qualifies as eligible worker retraining and, if it qualifies, whether the course or program is in a STEM or STEAM discipline.

2. A business shall be allowed the credit pursuant to subdivision B 2 only for an orientation, instruction, and training program that has been approved by the local school division and certified as eligible by the Virginia Economic Development Partnership Authority. A business seeking a tax credit under subdivision B 2 shall include in its application reviewed by the Virginia Economic Development Partnership Authority an approval from the local school division. The Virginia Economic Development Partnership Authority shall review requests for certification submitted by businesses and shall advise the Tax Commissioner whether an orientation, instruction, and training program qualifies as relating to the manufacturing activities undertaken by the business and meets other applicable requirements.

3. The Tax Commissioner shall develop guidelines (i) establishing procedures for claiming the credit provided by this section, (ii) defining eligible worker retraining, which shall include only those courses and programs that are substantially related to the duties of a qualified employee or that enhance the qualified employee's job-related skills, and that promote economic development, and (iii) providing for the allocation of credits among employers and businesses requesting credits in the event that the amount of credits for which requests are made exceeds the available amount of credits in any year. Such

guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Any credit not usable for the taxable year may be carried over for the next three taxable years. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If an employer or business that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such employer or business shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

F. No employer or business shall be eligible to claim a credit under this section for worker retraining or manufacturing orientation, instruction, and training undertaken by any program operated, administered, or paid for by the Commonwealth.

G. The Department shall review certifications received from the Virginia Economic Development Partnership Authority pursuant to subsection D and, if it determines a taxpayer meets the applicable requirements, shall issue a credit in the amount specified in subsection B.

H. The Virginia Economic Development Partnership Authority shall report annually to the Chairmen of the House Finance and Senate Finance Committees on the status and implementation of the credit established by this section, including certifications for eligible worker retraining.

§ 58.1-439.6:1. Worker training tax credit.

A. As used in this section, unless the context requires a different meaning:

"Eligible worker training" means the training of a qualified employee or non-highly compensated worker in the form of (i) credit or noncredit courses at any institution recognized on the Eligible Training Provider List that results in the qualified employee or non-highly compensated worker receiving a workforce credential or (ii) instruction or training that is part of an apprenticeship agreement approved by the Commissioner of Labor and Industry.

"Industry-recognized" means demonstrating competency or proficiency in the technical and occupational skills identified as necessary for performing functions of an occupation based on standards developed or endorsed by employers or industry organizations.

"Manufacturing" means processing, manufacturing, refining, mining, or converting products for sale or resale.

"Non-highly compensated worker" means a worker whose income is less than Virginia's median wage, as reported by the Virginia Employment Commission, in the taxable year prior to applying for the credit. "Non-highly compensated worker" does not include an owner or relative.

"Owner" means an individual who owns, directly or indirectly, more than a five percent interest in the business claiming the credit.

"Qualified employee" means an employee of a business eligible for a credit under this section in a full-time position requiring a minimum of 1,680 hours in the entire normal year of the business' operations if the standard fringe benefits are paid by the business for the employee. Employees in seasonal or temporary positions shall not qualify as qualified employees. "Qualified employee" does not include an owner or relative.

"Relative" means a spouse, child, grandchild, parent, or sibling of an owner.

"Workforce credential" means an industry-recognized (i) certification, (ii) certificate, or (iii) degree.

B. 1. For taxable years beginning on and after January 1, 2019, but prior to July 1, 2022, a business shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~ in an amount equal to 35 percent of expenses incurred by the business during the taxable year for eligible worker training. If the recipient of the training is a qualified employee, the credit shall not exceed $500 per qualified employee annually. If the recipient of the training is a non-highly compensated worker, the credit shall not exceed $1,000 per non-highly compensated worker annually.

2. For taxable years beginning on and after January 1, 2019, but prior to January 1, 2022, a business primarily engaged in manufacturing shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) in an amount equal to 35 percent of its direct costs incurred during the taxable year in conducting orientation, instruction, and training in the Commonwealth relating to the manufacturing activities undertaken by the business. In no event shall the credit allowed to a business under this subdivision exceed $2,000 for any taxable year. The Department shall allow credit only for programs that (i) provide orientation, instruction, and training solely to students in grades six through 12; (ii) are coordinated with the local school division; and (iii) are conducted either at a plant or facility owned, leased, rented, or otherwise used by the business or at a public middle or high school in the Commonwealth. The taxpayer shall include in its direct costs only the following expenditures: (a) salaries or wages paid to instructors and trainers, prorated for the period of instruction or training; (b) costs for orientation, instruction, and training materials; (c) amounts paid

for machinery and equipment used primarily for such instruction and training; and (d) the cost of leased or rented space used primarily for conducting the program.

3. The total amount of tax credits granted under this section for each fiscal year shall not exceed $1 million.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. 1. A business shall be allowed a credit pursuant to subdivision B 1 only for those programs and providers that have been approved for inclusion in the Commonwealth's Eligible Training Provider List. The Workforce Innovation Opportunity Act Title 1 Administrator shall provide the Tax Commissioner with the approved list annually.

2. A business shall be allowed the credit pursuant to subdivision B 2 only for an orientation, instruction, and training program that has been approved by the local school division and certified as eligible by the Department of Education. A business seeking a tax credit under subdivision B 2 shall include in its application reviewed by the Department of Education an approval from the local school division. The Department of Education shall review requests for certification submitted by businesses and shall advise the Tax Commissioner whether an orientation, instruction, and training program qualifies as relating to the manufacturing activities undertaken by the business and meets other applicable requirements.

3. The Tax Commissioner shall develop guidelines (i) establishing procedures for claiming the credit provided by this section and (ii) providing for the allocation of credits among businesses requesting credits in the event that the amount of credits for which requests are made exceeds the available amount of credits in any year. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Any credit not usable for the taxable year may be carried over for the next three taxable years. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If a business that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such business shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

F. No business shall be eligible to claim a credit under this section for eligible worker training or manufacturing orientation, instruction, and training undertaken by any program operated, administered, or paid for by the Commonwealth.

G. The Tax Commissioner shall report annually to the Chairmen of the House and Senate Committees on Finance on the status and implementation of the credit established by this section.

§ 58.1-439.12:09. Barge and rail usage tax credit.

A. As used in this section:

"International trade facility" means a company that:

1. Is doing business in the Commonwealth and engaged in port-related activities, including but not limited to warehousing, distribution, freight forwarding and handling, and goods processing;

2. Has the sole discretion and authority to move cargo originating or terminating in the Commonwealth;

3. Uses maritime port facilities located in the Commonwealth; and

4. Uses barges and rail systems to move cargo through port facilities in the Commonwealth rather than trucks or other motor vehicles on the Commonwealth's highways.

B. For taxable years beginning on and after January 1, 2011, but before January 1, 2022, a company that is an international trade facility shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.); Chapter 12 (§ 58.1-1200 et seq.); *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~. The amount of the credit shall be $25 per 20-foot equivalent unit (TEU), 16 tons of noncontainerized cargo, or one unit of roll-on/roll-off cargo moved by barge or rail rather than by trucks or other motor vehicles on the Commonwealth's highways.

C. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than $500,000 in tax credits pursuant to this section in any fiscal year of the Commonwealth. In addition, the Tax Commissioner shall not issue tax credits under this section subsequent to the Commonwealth's fiscal year ending on June 30, 2022. The international trade facility shall not be allowed to claim any tax credit under this section unless it has applied to the Department for the tax credit and the Department has approved the credit. The Department shall determine the credit

amount allowable for the year and shall provide a written certification to the international trade facility, which certification shall report the amount of the tax credit approved by the Department. The international trade facility shall attach the certification to the applicable tax return.

D. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

E. Any credit not usable for the taxable year may be carried over for the next five taxable years or until such credit is fully taken, whichever occurs first. The amount of the credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, before using any credit allowed pursuant to this section.

F. Notwithstanding the provisions of § 58.1-3, the Department of Taxation shall annually provide information to the Virginia Port Authority related to tax credits issued pursuant to this section.

G. The Tax Commissioner shall issue guidelines that are necessary and desirable to carry out the provisions of this section, including (i) the computation and carryover of the credits provided under this section and (ii) the establishment of criteria for international trade facilities. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-439.18. Definitions.

As used in this article:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~. "Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ 58.1-360 et seq.) of Chapter 3.

"Commissioner of Social Services" means the Commissioner of Social Services or his designee.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to low-income persons.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of low-income persons or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to a low-income person or an eligible student with a disability.

"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education and (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of low-income persons.

"Job training" means any type of instruction to an individual who is a low-income person that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Low-income person" means an individual whose family's annual household income is not in excess of 300 percent of the current poverty guidelines.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue Code of 1986, as amended

from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3.

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

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

"Scholastic assistance" means (i) counseling or supportive services to elementary school, middle school, secondary school, or postsecondary school students or their parents in developing a postsecondary academic or vocational education plan, including college financing options for such students or their parents, or (ii) scholarships.

§ 58.1-439.21. Tax credit; amount; limitation; carry over.

A. The Superintendent of Public Instruction and the Commissioner of Social Services shall certify to the Department of Taxation, or in the case of business firms subject to a tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 ~~or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25, ~~or Article 2 (§ 58.1-2620 et seq.) of Chapter 26,~~ in an amount equal to 65 percent of the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § 58.1-439.20. Notwithstanding any other law and for purposes of this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as determined for federal income tax purposes using the laws and regulations of the United States relating to federal income taxes. No tax credit shall be granted for any donation made in the taxable year with a value of less than $616.

A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available. Notwithstanding that this section establishes a tax credit of 65 percent of the value of the qualified donation, a business firm may by written agreement accept a lesser tax credit percentage from a neighborhood organization for any otherwise qualified donation it has made. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the type and value of the donation received, the business firm making the donation, and the tax credit percentage to be used in determining the amount of the tax credit. The certification shall also include any written agreement under which a business firm accepts a tax credit of less than 65 percent for a donation.

§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.

A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1, 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), *or* Chapter 25 (§ 58.1-2500 et seq.)~~, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~ in an amount equal to 65 percent of the value of the monetary or marketable securities donation made by the person to a scholarship foundation included on the list published annually by the Department of Education in accordance with the provisions of § 58.1-439.28.

No tax credit shall be allowed under this article if the value of the monetary or marketable securities donation made by an individual is less than $500. In addition, tax credits shall be issued only for the first $125,000 in value of donations made by the individual during the taxable year. The maximum aggregate donations of $125,000 for the taxable year for which tax credits may be issued and the minimum required donation of $500 shall apply on an individual basis. Such limitation on the maximum amount of tax credits issued to an individual shall not apply to credits issued to any business entity,

including a sole proprietorship.

B. Tax credits shall be issued to persons making monetary or marketable securities donations to scholarship foundations by the Department of Education on a first-come, first-served basis in accordance with procedures established by the Department of Education under the following conditions:

1. The total amount of tax credits that may be issued each fiscal year under this article shall not exceed $25 million.

2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), *or* Chapter 25 (§ 58.1-2500 et seq.)~~, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~, as applicable, for the taxable year for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), *or* Chapter 25 (§ 58.1-2500 et seq.)~~, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. In a form approved by the Department of Education, the person seeking to make a monetary or marketable securities donation to a scholarship foundation or a scholarship foundation on behalf of such person shall request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The Department of Education's preauthorization notice shall accompany the monetary or marketable securities donation from the person to the scholarship foundation, which shall, within 40 days, return the notice to the Department of Education certifying the value and type of donation and date received. Upon receipt and approval by the Department of Education of the preauthorization notice with required supporting documentation and certification of the value and type of the donation by the scholarship foundation, the Superintendent of Public Instruction shall as soon as practicable, and in no case longer than 30 days, issue a tax credit certificate to the person eligible for the tax credit. The person shall attach the tax credit certificate to the applicable tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Education shall provide a copy of the tax credit certificate to the scholarship foundation.

Preauthorization notices not acted upon by a donor within 180 days of issuance shall be void. No tax credit shall be approved by the Department of Education for activities that are a part of a person's normal course of business.

§ 58.1-504. Failure to pay estimated income tax.

A. In case of any underpayment of estimated tax by a corporation, except as provided in subsection D, there shall be added to the tax for the taxable year an amount determined at the rate established for interest under § 58.1-15, upon the amount of the underpayment (determined under subsection B) for the period of the underpayment (determined under subsection C).

B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year or, if no return was filed, ninety percent of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. The fifteenth day of the fourth month following the close of the taxable year.

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision B 1 for such installment date.

D. Notwithstanding the provisions of subsections A, B and C, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

1. The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of ~~twelve~~ *12* months.

2. An amount equal to the tax computed at the rate applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an

annualized basis the taxable income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

d. For the first nine months or for the first ~~eleven~~ *11* months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year. For purposes of this subdivision, the taxable income shall be placed on an annualized basis by (i) multiplying by ~~twelve~~ *12* the taxable income referred to in subdivision D 3 and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or ~~eleven~~ *11*, as the case may be) referred to in subsection A.

E. For purposes of subsection B, subdivisions D 2 and D 3, the term "tax" means the excess of the tax imposed by this chapter over the sum of any credits allowable against the tax.

F. The application of this to taxable years of less than ~~twelve~~ *12* months shall be in accordance with regulations prescribed by the Commissioner.

~~G. Pipeline distribution companies as defined in § 58.1-2600 and gas utilities, gas suppliers and electric suppliers as defined in § 58.1-400.2 that become subject to taxation under this chapter and prior thereto paid the annual license tax based on gross receipts, shall make estimated tax payments during the first year, or short taxable year under subsection E of § 58.1-400.2, they are so subject, and notwithstanding subsection D, any excesses described in subsection B shall constitute an underpayment for such year.~~

§ 58.1-2600. Definitions.

~~A.~~ As used in this chapter:

"Certificated motor vehicle carrier" means a common carrier by motor vehicle, as defined in § 46.2-2000, operating over regular routes under a certificate of public convenience and necessity issued by the Commission or issued on or after July 1, 1995, by the Department of Motor Vehicles. A transit company or bus company that is owned or operated directly or indirectly by a political subdivision of this Commonwealth shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, nor shall such transit company or bus company thereby be subject to the imposition of local property levies. A common carrier of property by motor vehicle shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, but shall be subject to the imposition of local property taxes.

"Cogenerator" means a qualifying cogenerator or qualifying small power producer within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Commission" means the State Corporation Commission ~~which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency responsible for the assessment of the real and personal property of all public service corporations, except those public service corporations for which the Department of Taxation is so designated, upon which the Commonwealth levies a license tax measured by the gross receipts of such corporations. The State Corporation Commission shall also assess the property of each telephone or telegraph company, every public service corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity, and each electric supplier, as provided by this chapter~~.

"Department" means the Department of Taxation ~~which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency to assess the real and personal property of railroads and pipeline transmission companies as defined herein~~.

"Electric supplier" means any person owning or operating facilities for the generation, transmission or distribution of electricity for sales, except any person owning or operating facilities with a designed generation capacity of ~~twenty-five~~ *25* megawatts or less.

~~"Estimated tax" means the amount of tax which a taxpayer estimates as being imposed by Article 2 (§ 58.1-2620 et seq.) of this chapter for the tax year as measured by the gross receipts received in the taxable year.~~

"Freight car company" includes every car trust, mercantile or other company or person not domiciled in this Commonwealth owning stock cars, furniture cars, fruit cars, tank cars or other similar cars. Such term shall not include a company operating a line as a railroad.

~~"Gross receipts" means the total of all revenue derived in the Commonwealth, including but not limited to income from the provision or performance of a service or the performance of incidental operations not necessarily associated with the particular service performed, without deductions for~~

~~expenses or other adjustments. Such term shall not, however, include interest, dividends, investment income or receipts from the sale of real property or other assets except inventory of goods held for sale or resale.~~

"Pipeline distribution company" means a corporation, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or by-products thereof to a purchaser for purposes of furnishing heat or light.

"Pipeline transmission company" means a corporation authorized to transmit natural gas, manufactured gas or crude petroleum and the products or by-products thereof in the public service by means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

"Tax Commissioner" means the chief executive officer of the Department of Taxation or his designee.

"Tax year" means the ~~twelve-month~~ *12-month* period beginning on January 1 and ending on December 31 of the same calendar year, such year also being the tax assessment year or the year in which the tax levied under this chapter shall be paid.

~~"Taxable year" means the calendar year preceding the tax year, upon which the gross receipts are computed as a basis for the payment of the tax levied pursuant to this chapter.~~

"Telegraph company" means a corporation or person operating the apparatus necessary to communicate by telegraph.

"Telephone company" means a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a person authorized by the Federal Communications Commission to provide commercial mobile service as defined in § 332(d) (1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service. The term "affiliated group" has the meaning given in § 58.1-3700.1.

~~B. For purposes of this chapter the terms "license tax" and "franchise tax" shall be synonymous.~~

§ 58.1-2655. Assessment by Department and Commission.

A. ~~The Tax Commissioner shall annually assess for local taxation the value of the real and tangible personal property, including real property used for common carrier purposes, of each railroad, except for nonoperating (noncarrier) property which shall be assessed pursuant to § 58.1-3201, upon the best and most reliable information that can be procured, and to this end shall be authorized and empowered to send for persons and papers.~~ The Tax Commissioner shall ~~also~~ assess upon the rolling stock of such railroads the taxes imposed by § 58.1-2652.

B. The Commission shall assess the average value of the rolling stock of each motor vehicle carrier used in the Commonwealth.

In the case of an interstate carrier, the rolling stock used in the Commonwealth shall be deemed to be that portion of the total rolling stock, owned or operated on the public highways of the Commonwealth, multiplied by a fraction wherein the numerator is the total vehicle miles traveled by such rolling stock in the Commonwealth and the denominator is the total vehicle miles traveled both within and without the Commonwealth on such operations as are related to the Commonwealth.

C. The Tax Commissioner shall assess, from the best and most reliable information that can be obtained, upon the rolling stock of a freight car company the taxes imposed by § 58.1-2652.

D. No local property taxes shall be imposed upon the rolling stock of a railroad or a freight car company.

§ 58.1-2690. No state or local tax on intangible personal property or money.

~~A. Except as provided in this chapter, there~~ *There* shall be no state or local taxes assessed on the intangible personal property, gross receipts or other such money or income owned by telephone or telegraph companies, railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam.

~~B. On the real estate and tangible personal property of every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in Virginia and of railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam, there shall be local levies at the rates prescribed by § 58.1-2606.~~

~~C. Notwithstanding the provisions of subsection A, any county, city or town may impose a license tax under § 58.1-3703 upon a corporation owning or operating telegraph or telephone lines in Virginia for the privilege of doing business therein, which shall not exceed one-half of one percent of the gross receipts of such business accruing to such corporation from such business in such county, city or town; however, charges for long distance telephone calls shall not be considered receipts of business in such county, city or town.~~

~~D. Notwithstanding the provisions of subsection A, any county, city or town may impose an excise tax under § 58.1-3818.3 upon a corporation owning or operating telegraph or telephone lines in Virginia, at a rate that shall not exceed the rate lawfully imposed by § 58.1-3818.3, on such corporation's gross receipts from sales of video programming or access to video programming directly to end-user subscribers who are located within such county, city or town.~~

§ 58.1-2900. Imposition of tax.

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 and subject to the adjustments authorized by subdivision A 5 and by § 58.1-2902, a tax on the consumers of electricity in the Commonwealth based on kilowatt hours delivered by the incumbent distribution utility and used per month as follows:

1. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month not in excess of 2,500 kWh at the rate of $0.00155 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00102/kWh	$0.00015/kWh	$0.00038/kWh

2. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 2,500 kWh but not in excess of 50,000 kWh at the rate of $0.00099 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00065/kWh	$0.00010/kWh	$0.00024/kWh

3. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 50,000 kWh at the rate of $0.00075 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00050/kWh	$0.00007/kWh	$0.00018/kWh

4. ~~The tax rates set forth in subdivisions 1, 2, and 3 are in lieu of and replace the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations furnishing heat, light or power by means of electricity.~~

~~5.~~ The tax on consumers under this section shall not be imposed on consumers served by an electric utility owned or operated by a municipality if such municipal electric utility elects to have an amount equivalent to the tax added on the bill such utility (or an association or agency of which it is a member) pays for bundled or unbundled transmission service as a separate item. Such amount, equivalent to the tax, shall be calculated under the tax rate schedule as if the municipal electric utility were selling and collecting the tax from its consumers, adjusted to exclude the amount which represents the local consumption tax ~~if the locality in which a consumer is located does not impose a license fee rate pursuant to § 58.1-3731~~, and shall be remitted to the Commission pursuant to § 58.1-2901. Municipal electric utilities may bundle the tax in the rates charged to their retail customers. Notwithstanding anything contained herein to the contrary, the election permitted under this subdivision shall not be exercised by any municipal electric utility if the entity to whom the municipal electric utility (or an association or agency of which it is a member) pays for transmission service is not subject to the taxing jurisdiction of the Commonwealth, unless such entity agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant to § 58.1-2901.

~~6.~~ 5. The tax on consumers set forth in subdivisions 1, 2, and 3 shall only be imposed in accordance with this subdivision on consumers of electricity purchased from a utility consumer services cooperative to the extent that such cooperative purchases, for the purpose of resale within the Commonwealth, electricity from a federal entity that made payments in accordance with federal law (i) in lieu of taxes during such taxable period to the Commonwealth and (ii) on the basis of such federal entity's gross proceeds resulting from the sale of such electricity. Such tax shall instead be calculated by deducting from each of the respective tax amounts calculated in accordance with subdivisions 1, 2, and 3 an amount equal to the calculated tax amount multiplied by the ratio of the total cost of power supplied by the federal entity, including facilities rental, during the taxable period to the utility consumer services cooperative's total operating revenue within the Commonwealth during the taxable period. The State Corporation Commission may audit the records and books of any utility consumer services cooperative that determines the tax on consumers in accordance with this subdivision to verify that the tax imposed has been correctly determined and properly remitted.

B. The tax authorized by this chapter shall not apply to municipalities' own use or to use by divisions or agencies of federal, state and local governments.

C. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such

customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

§ 58.1-2901. Collection and remittance of tax.

A. The provider of billing services shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt of the consumer to the Commonwealth, localities, and the State Corporation Commission. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is imposed by § 58.1-2900, the provider of billing services shall notify the State Corporation Commission of the name and address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services including the tax that is imposed by § 58.1-2900, the provider of billing services shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the State Corporation Commission and the appropriate locality. After the consumer pays the tax to the provider of billing services, the taxes collected shall be deemed to be held in trust by such provider until remitted to the State Corporation Commission and the appropriate locality.

When determining the amount of tax to collect from consumers of an electric utility that is a cooperative which purchases, for the purpose of resale within the Commonwealth, electricity from a federal entity that made payments during such taxable period to the Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be calculated on the basis of such federal entity's gross proceeds from the sale of electricity, the provider of billing services shall deduct from each of the respective tax amounts calculated in accordance with § 58.1-2900 an amount equal to the calculated tax amounts multiplied by the ratio that the total cost of the power, including facilities rental, supplied by said federal entity to said cooperative for resale within the Commonwealth bears to said cooperative's total operating revenue within the Commonwealth for the taxable period. The State Corporation Commission may audit the records and books of said cooperative to verify that the tax imposed by this chapter has been correctly determined and properly remitted.

B. A provider of billing services shall remit monthly to the Commission the amount of tax paid during the preceding month by the provider of billing services' consumers, except for (i) amounts added on the bills to utilities owned and operated by municipalities which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), which they shall remit directly to the Commission and (ii) the portion which represents the local consumption tax, which portion shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed. Amounts of the tax that are added on the bills to utilities owned and operated by municipalities, which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), shall be remitted monthly by such entity to the Commission, except that the portion which represents the local consumption tax shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed.

C. The electric utility consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the electric utility consumption tax that relate to the state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion that relates to the local consumption tax shall be remitted to the localities. Failure to remit timely will result in a ~~ten~~ *10* percent penalty.

D. ~~Taxes on electricity sales in the year ending December 31, 2000, relating to the local license tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C shall commence on February 28, 2001.~~

~~E.~~ For purposes of this section, "service provider" means the person who delivers electricity to the consumer and "provider of billing services" means the person who bills a consumer for electric services rendered. If both the service provider and another person separately and directly bill a consumer for electricity service, then the service provider shall be considered the "provider of billing services."

~~F.~~*E.* The portion of the electric utility consumption tax relating to the local consumption tax replaces and precludes localities from imposing ~~a license tax in accordance with § 58.1-3731 and~~ the business, professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) on electric suppliers subsequent to December 31, 2000~~, except as provided in subsection D~~. If the license fee rate imposed by a locality is less than the equivalent of the local consumption tax rate component of the consumption tax paid under subsection A of § 58.1-2900, the excess collected by the Commission shall constitute additional state consumption tax revenue and shall be remitted by the Commission to the state treasury. However, effective January 1, 2003, any locality that failed to comply with the requirements of this subsection by December 31, 2000, regarding the local license tax, shall receive the revenues generated on or after January 1, 2003, by the local consumption tax component paid under subsection A by the citizens of such locality. ~~Such locality shall be entitled to the maximum amount as if the locality~~

~~had imposed the license tax, in accordance with the provisions of § 58.1-3731 at the maximum rate allowed, provided that the governing body of such locality adopts an ordinance electing to receive such amounts.~~

~~G.~~*F.* The Department of Taxation may audit the books and records of any electric utility owned and operated by a municipality (or an association or agency of which the municipality is a member) to verify that the tax imposed by this chapter has been correctly determined and properly remitted to the Commission.

~~H.~~*G.* The State Corporation Commission may audit the books and records of any service provider or provider of billing services, except as provided in subsection ~~G~~ *F*, to verify that the tax imposed by this chapter has been correctly determined and properly remitted to the Commission.

§ 58.1-2902. Electric utility consumption tax relating to the special regulatory tax; when not assessed or assessed only in part.

A. The Commission may in the performance of its function and duty in levying the electric utility consumption tax relating to the special regulatory tax, omit the levy on any portion of the tax fixed in § 58.1-2900 as is unnecessary within the Commission's sole discretion for the accomplishment of the objects for which the tax is imposed, including a reasonable margin in the nature of a reserve fund.

B. The Commission shall notify each provider of billing services, as defined in subsection ~~E~~ *D* of § 58.1-2901, collecting the tax on consumers of electricity of any change in the electric utility consumption tax relating to the special regulatory tax not later than the first day of the second month preceding the month in which the revised rate is to take effect.

§ 58.1-2904. Imposition of tax.

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of this title, a tax on the consumers of natural gas in the Commonwealth based on volume of gas at standard pressure and temperature in units of 100 cubic feet (CCF) delivered by the pipeline distribution company or gas utility and used per month. Each consumer of natural gas in the Commonwealth shall pay tax on the consumption of all natural gas consumed per month not in excess of 500 CCF at the following rates: (i) state consumption tax rate of $0.0135 per CCF, (ii) local consumption tax rate of $0.004 per CCF, and (iii) a special regulatory tax rate of up to $0.002 per CCF.

B. ~~The tax rates set forth in subsection A are in lieu of and replace the state gross receipts tax pursuant to § 58.1-2626, the special regulatory revenue tax pursuant to § 58.1-2660, and the local license tax pursuant to § 58.1-3731 levied on corporations furnishing heat, light or power by means of natural gas.~~

~~C.~~ The tax of consumers under this section shall not be imposed on consumers served by a gas utility owned or operated by a municipality.

~~D.~~ *C.* The tax authorized by this chapter shall not apply to use by divisions or agencies of federal, state and local governments.

§ 58.1-2905. Collection and remittance of tax.

A. A pipeline distribution company or gas utility shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such company, the tax shall constitute a debt of the consumer to the Commonwealth. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the Commonwealth, the pipeline distribution company or gas utility shall notify the Commission of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a pipeline distribution company or gas utility, including the tax imposed by the Commonwealth, the pipeline distribution company or gas utility shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit the tax portion to the Commission. After the consumer pays the tax to the pipeline distribution company or gas utility, the taxes shall be deemed to be held in trust by such pipeline distribution company or gas utility until remitted to the Commission.

B. A pipeline distribution company or gas utility shall remit monthly to the Commission the amount of tax paid during the preceding month by the pipeline distribution company's consumers, except for the portion which represents the local consumption tax, which portion shall be remitted to the locality in which the natural gas was consumed and shall be based on such locality's license fee rate which it imposed.

C. The natural gas consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the natural gas consumption tax that related to the state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion that relates to the local consumption tax shall be remitted to the appropriate localities. Failure to remit timely will result in a ~~ten~~ *10* percent penalty.

D. ~~Taxes on natural gas sales in the year ending December 31, 2000, relating to the local license tax,~~

~~shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C shall commence on February 28, 2001.~~

~~E.~~ The portion of the natural gas consumption tax relating to the local license tax replaces and precludes localities from imposing ~~a license tax in accordance with § 58.1-3731 and~~ the business, professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) of this title on gas suppliers subsequent to December 31, 2000, except as provided in subsection D. If the license fee rate imposed by a locality is less than the equivalent of the local consumption tax rate component of the consumption tax paid under subsection A of § 58.1-2904, the excess collected by the Commission shall constitute additional state consumption tax revenue and shall be remitted by the Commission to the state treasury.

~~F.~~ *E.* Nothing in this section shall prohibit a locality from enacting an ordinance or other local law to allow such locality to receive that portion of the natural gas consumption tax that represents the local consumption tax beginning at such time that natural gas service is first made available in such locality. The amount of such local consumption tax to be distributed to the locality shall be determined in accordance with the provisions of subsection B~~, assuming that the maximum license tax rate allowed pursuant to § 58.1-3731 was imposed~~.

§ 58.1-3201. What real estate to be taxed; amount of assessment; public service corporation property.

A. All real estate, except that exempted by law, shall be subject to such annual taxation as may be prescribed by law.

B. All general reassessments or annual assessments in those localities which have annual assessments of real estate~~, except as otherwise provided in § 58.1-2604,~~ shall be made at 100 percent fair market value ~~and, except as provided in § 58.1-2608, the State Corporation Commission and the Department of Taxation shall certify public service corporation property to such county or city, with the exception of the nonoperating (noncarrier) property of railroads, on the basis of the assessment ratio as most recently determined and published by the Department of Taxation. The Department of Taxation shall, ten days after determining the assessment ratio, notify the locality of that determination and the basis on which the determination was made. Nonoperating (noncarrier) property of railroads shall be valued for assessment by the city or county in which it is located uniformly with similarly situated real estate in the same jurisdiction upon the best and most reliable information that can be procured. The Tax Commissioner shall determine which property is part of the operating unit of the railroads and which is nonoperating (noncarrier) property for purposes of the report described in § 58.1-2653. Such determination shall be made in accordance with the meaning of such terms in the Interstate Commerce Commission's Uniform System of Accounts. The inclusion, or failure to include, property in such report described in § 58.1-2653 may be reviewed and redetermined by the Tax Commissioner at the request of any railroad, county, city, town or magisterial district~~.

C. Except for the rolling stock of a railroad, a freight car company, and a certificated motor vehicle carrier, which shall be taxed pursuant to the provisions of Article 5 (§ 58.1-2652 et seq.) of Chapter 26, the real property of any public service corporation shall be assessed and taxed according to the provisions of this chapter.

§ 58.1-3203. Taxation of certain leasehold interests; concessions.

A. All leasehold interests in real property that is exempt from assessment for taxation from the owner shall be assessed for local taxation to the lessee. If the remaining term of the lease is 50 years or more, or the lease permits the lessee to acquire the real property for a nominal sum at the completion of the term, such leasehold interest shall be assessed as if the lessee were the owner. Otherwise, such assessment shall be reduced two percent for each year that the remainder of such term is less than 50 years; however, no such assessment shall be reduced more than 85 percent. If the lessee has a right to renew without the consent of the lessor, the term of such lease shall be the sum of the original lease term plus all such renewal terms.

B. When any real property is exempt from taxation under Section 6 (a)(1) or (2) or by designation under Section 6 (a)(6) of Article X of the Constitution of Virginia, the leasehold interest in such property may also be exempt from taxation, provided that the property is leased to a lessee that is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code or to a lessee that is entitled to or has received federal rehabilitation tax credits relating to the property pursuant to 26 U.S.C. § 47 or any successor thereto, and is used exclusively by such lessee primarily for charitable, literary, scientific, cultural, or educational purposes. No leasehold interest or concession, as defined in § 33.2-1800, of tax exempt property of a governmental agency shall be subject to assessment for local property tax purposes where the property is leased to ~~a public service corporation or subsidiary thereof or~~ a nonstock, nonprofit corporation whose occupation, use, or operation of the tax exempt property is in aid of or promotes the governmental purposes set out in Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 or to a private entity that is party to a concession agreement with a responsible public entity pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or to similar federal law.

C. When any real property is exempt from taxation under § 15.2-7510, the leasehold interest in the property shall also be exempt from taxation.

D. The provisions of this section shall not apply to any leasehold interests exempted or partially exempted by other provisions of law.

§ 58.1-3321. Effect on rate when assessment results in tax increase; public hearings.

A. When any annual assessment, biennial assessment or general reassessment of real property by a county, city or town would result in an increase of one percent or more in the total real property tax levied, such county, city, or town shall reduce its rate of levy for the forthcoming tax year so as to cause such rate of levy to produce no more than 101 percent of the previous year's real property tax levies, unless subsection B is complied with, which rate shall be determined by multiplying the previous year's total real property tax levies by 101 percent and dividing the product by the forthcoming tax year's total real property assessed value. An additional assessment or reassessment due to the construction of new or other improvements, including those improvements and changes set forth in § 58.1-3285, to the property shall not be an annual assessment or general reassessment within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations provided for under this section.

B. The governing body of a county, city, or town may, after conducting a public hearing, which shall not be held at the same time as the annual budget hearing, increase the rate above the reduced rate required in subsection A if any such increase is deemed to be necessary by such governing body.

Notice of the public hearing shall be given at least 30 days before the date of such hearing by the publication of a notice in (i) at least one newspaper of general circulation in such county or city and (ii) a prominent public location at which notices are regularly posted in the building where the governing body of the county, city, or town regularly conducts its business, except that such notice shall be given at least 14 days before the date of such hearing in any year in which neither a general appropriation act nor amendments to a general appropriation act providing appropriations for the immediately following fiscal year have been enacted by April 30 of such year. Any such notice shall be at least the size of one-eighth page of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18-point. The notice described in clause (i) shall not be placed in that portion, if any, of the newspaper reserved for legal notices and classified advertisements. The notice described in clauses (i) and (ii) shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

NOTICE OF PROPOSED REAL PROPERTY TAX INCREASE

The (name of the county, city or town) proposes to increase property tax levies.

1. Assessment Increase: Total assessed value of real property, excluding additional assessments due to new construction or improvements to property, exceeds last year's total assessed value of real property by _____ percent.

2. Lowered Rate Necessary to Offset Increased Assessment: The tax rate which would levy the same amount of real estate tax as last year, when multiplied by the new total assessed value of real estate with the exclusions mentioned above, would be $_____ per $100 of assessed value. This rate will be known as the "lowered tax rate."

3. Effective Rate Increase: The (name of the county, city or town) proposes to adopt a tax rate of $_____ per $100 of assessed value. The difference between the lowered tax rate and the proposed rate would be $_____ per $100, or _____ percent. This difference will be known as the "effective tax rate increase."

Individual property taxes may, however, increase at a percentage greater than or less than the above percentage.

4. Proposed Total Budget Increase: Based on the proposed real property tax rate and changes in other revenues, the total budget of (name of county, city or town) will exceed last year's by _____ percent.

A public hearing on the increase will be held on (date and time) at (meeting place).

C. All hearings shall be open to the public. The governing body shall permit persons desiring to be heard an opportunity to present oral testimony within such reasonable time limits as shall be determined by the governing body.

D. ~~The provisions of this section shall not be applicable to the assessment of public service corporation property by the State Corporation Commission.~~

~~E.~~ Notwithstanding other provisions of general or special law, the tax rate for taxes due on or before June 30 of each year may be fixed on or before May 15 of that tax year.

§ 58.1-3378. Sittings; notices thereof.

Each board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by this chapter. Of each sitting public notice shall be given at least 10 days beforehand by publication in a newspaper having general circulation in

the county or city and, in a county, also by posting the notice at the courthouse and at each public library, voting precinct or both. Such posting shall be done by the sheriff or his deputy. Such notice shall inform the public that the board shall sit at the place or places and on the days named therein for the purpose of equalizing real estate assessments in such county or city and for the purpose of hearing complaints of inequalities wherein the property owners allege a lack of uniformity in assessment, or errors in acreage in such real estate assessments. The board also shall hear complaints that real property is assessed at more than fair market value. Except as otherwise provided by the Code of Virginia:

1. The fair market value of real property shall be established by the board as of January 1 of the applicable year; or

2. If a county or city has adopted July 1 as its tax day for real property pursuant to § 58.1-3011, then~~, for other than public service corporation property,~~ the fair market value of real property shall be established by the board as of July 1 of the applicable year.

The governing body of any county or city may provide by ordinance the date by which applications must be made by property owners or lessees for relief. Such date shall not be earlier than 30 days after the termination of the date set by the assessing officer to hear objections to the assessments as provided in § 58.1-3330. If no applications for relief are received by such date, the board of equalization shall be deemed to have discharged its duties. Such governing body may also provide by ordinance the deadline by which all applications must be finally disposed of by the board of equalization. All such deadlines shall be clearly stated on the notice of assessment. Notwithstanding such deadlines, if a taxpayer applies to the commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue for relief from a real property tax assessment prior to such deadlines, and such deadlines occur prior to a final determination on such application for relief, and the taxpayer advises the circuit court that he wishes to appeal the determination to the board of equalization, then the circuit court may require the board of equalization to hear and act on such appeal. The governing body may provide for applications for relief to be made electronically; however, taxpayers retain the right to file applications on traditional paper forms provided by the governing body as long as such forms are submitted prior to the established deadline. If such paper forms are mailed by the applicant, the postmark date shall be considered the date of receipt by the governing body. A hearing for relief before the board of equalization regarding an assessment on residential property shall not be denied on the basis of a lack of information on the application for relief, as long as the application includes the address, the parcel number, and the owner's proposed assessed value for the property. If the application for relief is sent electronically, the date the applicant sends the application shall be considered the date of receipt by the governing body. The application is considered sent when it meets the requirements of subsection (a) of § 59.1-493. A hearing for relief before the board of equalization regarding an assessment on commercial, multi-family residential, or industrial property on the basis of fair market value shall not be denied on the basis of a lack of information on the application, as long as documentation of any applicable assessment methodologies is submitted with the application, and the application includes the address, the parcel number, and the owner's proposed assessed value for the property.

§ 58.1-3500. Defined and segregated for local taxation.

Tangible personal property shall consist of all personal property not otherwise classified by (i) § 58.1-1100 as intangible personal property, (ii) § 58.1-3510 as merchants' capital, or (iii) § 58.1-3510.4 as short-term rental property. *Tangible personal property shall include property owned by a public service corporation, except for the rolling stock of a railroad, a freight car company, and a certificated motor vehicle carrier, which shall be taxed pursuant to the provisions of Article 5 (§ 58.1-2652 et seq.) of Chapter 26.* Such tangible personal property is hereby segregated for and made subject to local taxation only pursuant to Article X, Section 4 of the Constitution of Virginia.

§ 58.1-3702. Authority of counties, cities and towns.

The provisions of this chapter shall be the sole authority for counties, cities and towns for the levying of the license taxes described herein. Except as provided herein, the governing body of every county, city and town that levies such license tax may impose the tax on the gross receipts or the Virginia taxable income of the business. Virginia taxable income shall be calculated pursuant to the provisions of § 58.1-322 or 58.1-402, whichever is applicable to the business. Throughout this chapter~~, except in § 58.1-3731,~~ wherever the term "gross receipts" is used, the term "Virginia taxable income" shall be substituted whenever a county, city or town selects it as the base on which to levy the license tax.

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed $100 for any locality with a population greater than 50,000, $50 for any locality with a population of 25,000 but no more than 50,000 and $30 for any locality with a population smaller than 25,000. For purposes of this section, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. Such governing

body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed $50 by January 1, 2000. The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private businesses and industries entering into agreements for the establishment, installation, renovation, remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

C. No county, city, or town shall impose a license fee or levy any license tax:

1. On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration~~, except as provided in § 58.1-3731 or as permitted by other provisions of law~~;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture. For purposes of this subdivision, this shall include a manufacturer that is also a defense production business selling manufacturing, rebuilding, repair, and maintenance services at the place of manufacture (i) to the United States or (ii) for which consent of the United States is required;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses, and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

8. [Repealed.]

9. On or measured by receipts for management, accounting, or administrative services provided on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by an entity which is a member of an affiliated group of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated entities from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in this subdivision, ~~the term~~ "sales by the affiliated entity to a nonaffiliated entity" means sales by the affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in § 51.5-98;

15. [Expired.]

16. [Repealed.]

17. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. ~~"Accredited~~ *For the purposes of this subdivision, "accredited* religious practitioner" ~~shall be defined as~~ *means* one who is engaged solely in praying for others upon accreditation by such church or religious denomination;

18. a. On or measured by receipts of a nonprofit organization described in Internal Revenue Code § 501(c)(3) or 501(c)(19) except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "nonprofit organization" means an organization that is described in Internal Revenue Code § 501(c)(3) or 501(c)(19), and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions exempt from federal income tax under Internal Revenue Code § 501(c)(3) shall be limited to schools, colleges, and other similar institutions of learning.

b. On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration that are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than the nonprofit organizations described in subdivision a;

19. On any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located provided the locality is otherwise authorized to tax such businesses and rental of real estate;

20. On total assessments paid by condominium unit owners for common expenses. ~~"Common~~ *For the purposes of this subdivision, "common* expenses" and "unit owner" have the same meanings as in § 55.1-1900; or

21. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof or by the United States as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

D. Any county, city or town may establish by ordinance a business license incentive program for "qualifying businesses." For purposes of this subsection, a "qualifying business" is a business that locates for the first time in the locality adopting such ordinance. A business shall not be deemed to locate in such locality for the first time based on merger, acquisition, similar business combination, name change, or a change in business form. Any incentive established pursuant to this subsection may extend for a period not to exceed two years from the date the business locates in such locality. The business license incentive program may include (i) an exemption, in whole or in part, of license taxes for any qualifying business; (ii) a refund or rebate, in whole or in part, of license taxes paid by a qualifying business; or (iii) other relief from license taxes for a qualifying business not prohibited by state or federal law.

E. For taxable years beginning on or after January 1, 2012, any locality may exempt, by ordinance, license fees or license taxes on any business that does not have an after-tax profit for the taxable year and offers the income tax return of the business as proof to the local commissioner of the revenue. Eligibility for this exemption shall be determined annually and it shall be the obligation of the business owner to submit the applicable income tax return to the local commissioner of the revenue.

§ 58.1-3703.1. Uniform ordinance provisions.

A. Every ordinance levying a license tax pursuant to this chapter shall include provisions substantially similar to this subsection. As they apply to license taxes, the provisions required by this section shall override any limitations or requirements in Chapter 39 (§ 58.1-3900 et seq.) of this title to the extent that they are in conflict.

1. License requirement. Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if (i) the person has a definite place of business in this jurisdiction; (ii) there is no definite place of business anywhere and the person resides in this

jurisdiction; or (iii) there is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, *or* contractor subject to § 58.1-3715~~, or public service corporation~~. A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (a) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction; (b) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (c) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

Notwithstanding the foregoing, the governing body of any county, city or town with a population greater than 50,000 may waive the license requirements provided herein for businesses with gross receipts of less than $100,000.

2. Due dates and penalties.

a. Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensure in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the license year if he had been issued a license for the preceding year. Any locality is authorized to adopt a later application date that is on or before May 1 of the license year. The application shall be on forms prescribed by the assessing official.

b. The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before the locality's fixed due date for filing license applications or a later date, including installment payment dates, or 30 or more days after beginning business, at the locality's option.

c. The assessing official may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of 10 percent of the portion paid after the due date.

d. A penalty of 10 percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within 30 days, the treasurer or other collecting official may impose a 10 percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

For the purposes of this subdivision:

"Acted responsibly" means that: (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

"Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

e. Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged

under § 58.1-3916.

No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund or the due date of the tax, whichever is later.

3. Situs of gross receipts.

a. General rule. Whenever the tax imposed by this ordinance is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within this jurisdiction. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

(1) The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of § 58.1-3715;

(2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality;

(3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then to the definite place of business at which the rental of such property is managed; and

(4) The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled.

b. Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

c. Agreements. The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

4. Limitations and extensions.

a. Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this ordinance, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made

before the expiration of the period previously agreed upon.

b. Notwithstanding § 58.1-3903, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.

c. The period for collecting any local license tax shall not expire prior to the period specified in § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this subdivision of the ordinance, two years after the final determination of an appeal for which collection has been stayed pursuant to subdivision 5 b or 5 d of this ordinance, or two years after the final decision in a court application pursuant to § 58.1-3984 or a similar law for which collection has been stayed, whichever is later.

5. Administrative appeals to commissioner of the revenue or other assessing official.

a. Definitions. For purposes of this section:

"Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

"Appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

An appealable event shall include a taxpayer's appeal of the classification applicable to a business, including whether the business properly falls within a business license subclassification established by the locality, regardless of whether the taxpayer's appeal is in conjunction with an assessment, examination, audit, or any other action taken by the locality.

"Frivolous" means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the locality; (ii) remove his property therefrom; (iii) conceal himself or his property therein; or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

b. Filing and contents of administrative appeal. Any person assessed with a local license tax as a result of an appealable event as defined in this section may file an administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the commissioner of the revenue or other local assessing official. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision.

The taxpayer may at any time also file an administrative appeal of the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the locality. However, the appeal of the classification of the business shall not apply to any license year for which the Tax Commissioner has previously issued a final determination relating to any license fee or license tax imposed upon the taxpayer's business for the year. In addition, any appeal of the classification of a business shall in no way affect or change any limitations period prescribed by law for appealing an assessment.

c. Notice of right of appeal and procedures. Every assessment made by a commissioner of the revenue or other assessing official pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal.

For purposes of facilitating an administrative appeal of the classification applicable to a taxpayer's

business, each locality imposing a tax or fee under this chapter shall maintain on its website the specific procedures to be followed in the jurisdiction with regard to such appeal and the name and address to which the appeal should be directed.

d. Suspension of collection activity during appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the commissioner of the revenue or other assessing official shall be suspended until a final determination is issued by the commissioner of the revenue or other assessing official, unless the treasurer or other official responsible for the collection of such tax (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the commissioner of the revenue or other assessing official that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the commissioner of the revenue or other assessing official that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of subdivision 2 e of this subsection, but no further penalty shall be imposed while collection action is suspended.

e. Procedure in event of nondecision. Any taxpayer whose administrative appeal to the commissioner of the revenue or other assessing official pursuant to the provisions of subdivision 5 of this subsection has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the commissioner of the revenue or other assessing official, elect to treat the appeal as denied and appeal the assessment or classification of the taxpayer's business to the Tax Commissioner in accordance with the provisions of subdivision 6 of this subsection. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the commissioner of the revenue or other assessing official was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the commissioner or other assessing official to make his determination.

6. Administrative appeal to the Tax Commissioner.

a. Any person assessed with a local license tax as a result of a determination or that has received a determination with regard to the person's appeal of the license classification or subclassification applicable to the person's business, upon an administrative appeal to the commissioner of the revenue or other assessing official pursuant to subdivision 5 of this subsection, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment or determination to the Tax Commissioner within 90 days of the date of the determination by the commissioner of the revenue or other assessing official. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the commissioner of the revenue or other assessing official. The Tax Commissioner shall permit the commissioner of the revenue or other assessing official to participate in the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to § 58.1-1821, and the Tax Commissioner pursuant to § 58.1-1822 may issue an order correcting such assessment or correcting the license classification or subclassification of the business and the related license tax or fee liability.

b. Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subdivision 6 a of this subsection, collection activity with respect to the amount in dispute relating to any assessment by the commissioner of the revenue or other assessing official shall be suspended until a final determination is issued by the Tax Commissioner, unless the treasurer or other official responsible for the collection of such tax (i) determines that collection would be jeopardized by delay as defined in this section; (ii) is advised by the commissioner of the revenue or other assessing official, or the Tax Commissioner, that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) is advised by the commissioner of the revenue or other assessing official that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of subdivision 2 e of this subsection, but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to subdivision 6 a of this subsection is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.

c. Implementation of determination of Tax Commissioner. Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to subdivision 6 a of this subsection, the commissioner of the revenue or other assessing official shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer and to the treasurer or other official responsible for collection in accordance with the provisions of this subdivision.

(1) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the commissioner of the revenue or other assessing official shall certify the amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue

a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the determination of the Tax Commissioner.

(2) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the commissioner of the revenue or other assessing official shall certify the amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner.

(3) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the commissioner of the revenue or other assessing official shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall certify the new assessment to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.

(4) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the commissioner of the revenue or other assessing official to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the commissioner of the revenue or other assessing official shall promptly commence the steps necessary to undertake such new or revised assessment or to determine the amount of refund due in the case of a correction to the license classification or subclassification of the business, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The commissioner of the revenue or other assessing official shall certify the new assessment or refund amount to the treasurer or other official responsible for collection, and the treasurer or other official responsible for collection shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment or determination of the amount of the refund.

7. Judicial review of determination of Tax Commissioner.

a. Judicial review. Following the issuance of a final determination of the Tax Commissioner pursuant to subdivision 6 a of this subsection, the taxpayer or commissioner of the revenue or other assessing official may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

b. Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.

(1) On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-3984, of a determination of the Tax Commissioner pursuant to subdivision 6 a of this subsection, and upon payment of the amount of the tax relating to any assessment by the commissioner of the revenue or other assessing official that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the treasurer or other collection official shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

(2) Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

(3) No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute or the application does not relate to any assessment by the commissioner of the revenue or other assessing official.

(4) The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(5) The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 without prior exhaustion of the appeals provided by subdivisions 5 and 6 of this subsection.

c. Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.

(1) Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant to subdivision 6 a of this subsection shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in this section.

(2) No suspension of refund activity shall be permitted if the locality's application for judicial review fails to identify with particularity the amount in dispute.

(3) The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

d. Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with the provisions of subdivision 2 e of this subsection, but no further penalty shall be imposed while collection action is suspended.

8. Rulings.

Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the commissioner of the revenue or other assessing official. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the locality.

Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

9. ~~Record-keeping~~ *Recordkeeping* and audits. Every person who is assessable with a local license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

B. Transitional provisions.

1. A locality which changes its license year from a fiscal year to a calendar year and adopts a due date for license applications between March 1 and May 1, inclusive, shall not be required to prorate any license tax to reflect a license year of less than 12 months, whether the tax is a flat amount or measured by gross receipts, provided that no change is made in the taxable year for measuring gross receipts.

2. The provisions of this section relating to penalties, interest, and administrative and judicial review of an assessment shall be applicable to assessments made on and after January 1, 1997, even if for an earlier license year. The provisions relating to agreements extending the period for assessing tax shall be effective for agreements entered into on and after July 1, 1996. The provisions permitting an assessment of a license tax for up to six preceding years in certain circumstances shall not be construed to permit

the assessment of tax for a license year beginning before January 1, 1997.

3. Every locality shall adopt a fixed due date for license applications between March 1 and May 1, inclusive, no later than the 2007 license year.

§ 58.1-3706. Limitation on rate of license taxes.

A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703, no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712 and 58.1-3713, or any other provision of this title or any charter, shall be imposed on any person whose gross receipts from a business, profession or occupation subject to licensure are less than: (i) $100,000 in any locality with a population greater than 50,000; or (ii) $50,000 in any locality with a population of 25,000 but no more than 50,000. Any business with gross receipts of more than $100,000, or $50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the class of enterprise listed:

1. For contracting, and persons constructing for their own account for sale, ~~sixteen~~ *16* cents per $100 of gross receipts;

2. For retail sales, ~~twenty~~ *20* cents per $100 of gross receipts;

3. For financial, real estate and professional services, ~~fifty-eight~~ *58* cents per $100 of gross receipts; and

4. For repair, personal and business services, and all other businesses and occupations not specifically listed or excepted in this section, ~~thirty-six~~ *36* cents per $100 of gross receipts.

The rate limitations prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be governed by § 58.1-3716; (ii) ~~public service companies, which shall be governed by § 58.1-3731;~~ ~~(iii)~~ carnivals, circuses and speedways, which shall be governed by § 58.1-3728; ~~(iv)~~ *(iii)* fortune-tellers, which shall be governed by § 58.1-3726; ~~(v)~~ *(iv)* massage parlors; ~~(vi)~~ *(v)* itinerant merchants or peddlers, which shall be governed by § 58.1-3717; ~~(vii)~~ *(vi)* permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed by § 58.1-3729; ~~(viii)~~ *(vii)* savings institutions and credit unions, which shall be governed by § 58.1-3730; ~~(ix)~~ *(viii)* photographers, which shall be governed by § 58.1-3727; and ~~(x)~~ *(ix)* direct sellers, which shall be governed by § 58.1-3719.1.

B. Any county, city or town which had, on January 1, 1978, a license tax rate, for any of the categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the following conditions:

1. A locality may not increase a rate on any category which is at or above the maximum prescribed for such category in subsection A.

2. If a locality increases the rate on a category which is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories which are above such maximum.

3. A locality shall lower rates on categories which are above the maximums prescribed in subsection A for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue received from all categories in tax year 1980, plus one-third of the amount, if any, by which such revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.

C. Any person engaged in the short-term rental business as defined in § 58.1-3510.4 shall be classified in the category of retail sales for license tax rate purposes.

D. 1. Any person, firm, or corporation designated as the principal or prime contractor receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences shall be subject to a license tax rate not to exceed three cents per $100 of such federal funds received in payment of such contracts upon documentation provided by such person, firm or corporation to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by

that locality in accordance with subdivision 1 ~~of this subsection~~, and on which a license tax is due and paid, or which gross receipts defined by subdivision 1 ~~of this subsection~~ are properly reported to but exempted by a Virginia locality from taxation, shall not be subject to local license taxation by any other locality in the Commonwealth.

3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county manager plan of government, the following shall govern the taxation of the licensees described in subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences may be separately classified by any such county and subject to tax at a license tax rate not to exceed the limits set forth in subsections A through C above as to such federal funds received in payment of such contracts upon documentation provided by such persons, firms, or corporations to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

E. In any case in which the Department of Mines, Minerals and Energy determines that the weekly U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District — Lower Atlantic Region) has increased by ~~20%~~ *20 percent* or greater in any one-week period over the immediately preceding one-week period and does not fall below the increased rate for at least 28 consecutive days immediately following the week of such increase, then, notwithstanding any tax rate on retailers imposed by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in the following license year shall not exceed ~~110%~~ *110 percent* of the gross receipts taxes on fuel sales made by such retailer in the license year of such increase. For license years beginning on or after January 1, 2006, every gas retailer shall maintain separate records for fuel sales and nonfuel sales and shall make such records available upon request by the local tax official.

The provisions of this subsection shall not apply to any person or entity (i) not conducting business as a gas retailer in the county, city, or town for the entire license year immediately preceding the license year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to § 58.1-3703 for the license year immediately preceding the license year of such increase.

The Department of Mines, Minerals and Energy shall determine annually if such increase has occurred and remained in effect for such 28-day period.

§ 58.1-3708. Situs for local license taxation of businesses, professions, occupations, etc.

A. Except as otherwise provided by law ~~and except as to public service corporations~~, the situs for the local license taxation for any business, profession, trade, occupation or calling subject to licensure, shall be the county, city or town (hereinafter called "locality") in which the person so engaged has a definite place of business. If any such person has a definite place of business in any other locality, then such other locality may impose a license tax on him, provided such other locality is otherwise authorized to impose a local license tax with respect thereto.

B. Where a local license tax imposed by any locality is measured by volume, the volume on which the tax may be computed shall be the volume attributable to all definite places of business of the business, profession, trade, occupation or calling in such locality. All volume attributable to any definite places of business of the business, profession, trade, occupation or calling in any other locality shall be deductible from the base in computing any local license tax measured by volume imposed on him by the locality in which the first-mentioned definite place is located.

C. ~~The word~~ *As used in this section,* "volume," ~~as used in this section,~~ means gross receipts, sales, purchases, or other base for measuring a license tax which is related to the amount of business done.

D. This section shall not be construed as prohibiting any locality from requiring a separate license for each definite place of business located in such locality.

§ 58.1-3814. Water or heat, light and power companies.

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.), which tax shall not be imposed at a rate in excess of 20 percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of $15 per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. For taxable years beginning on and after January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be imposed pursuant to subsections C through J only.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until 60 days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality; provided, that no county shall be authorized under this section to impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.), provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or service authority providing water or sewer services or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.

Any county, city or town may provide for an exemption from the tax for any public safety answering point as defined in § 58.1-3813.1.

Any municipality required to collect a tax imposed under authority of this section for another city or county or town shall be entitled to a reasonable fee for such collection.

D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or services, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

E. The tax authorized by this section shall not apply to:

1. Utility sales of products used as motor vehicle fuels; or

2. Natural gas used to generate electricity by a public utility as defined in § 56-265.1 or an electric cooperative as defined in § 56-231.15.

F. 1. Any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2.

The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The provider of billing services shall bill the tax to all users who are subject to the tax and to whom it bills for electricity service, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. The current service provider shall provide to localities no later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to $3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to kilowatt hours. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received from each class of nonresidential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax paid in calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour rates for nonresidential consumers shall not apply after January 1, 2004. On or before October 31, 2000, any locality imposing a tax on consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J. Notice of such amendment shall be provided to service providers in a manner consistent with subsection B except that "registered agent of the provider of billing services" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

G. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt

to the locality. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is imposed by a locality, the provider of billing services shall notify the locality of the name and address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services, including the tax imposed by a locality as stated thereon, the provider of billing services shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the provider of billing services, the taxes shall be deemed to be held in trust by such provider of billing services until remitted to the localities.

H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current pipeline distribution companies and gas utilities shall provide to localities not later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to $3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received and due from each of the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on nonresidential customers up to the amount authorized by subsection A.

On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J of this section. Notice of such amendment shall be provided to pipeline distribution companies and gas utilities in a manner consistent with subsection B except that "registered agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

I. Until the consumer pays the tax to such gas utility or pipeline distribution company, the tax shall constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the locality, the gas utility or pipeline distribution company shall notify the localities of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline distribution company shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the gas utility or pipeline distribution company, the taxes shall be deemed to be held in trust by such gas utility or pipeline distribution company until remitted to the localities.

J. For purposes of this section:

"Class of consumers" means a category of consumers served under a rate schedule established by the pipeline distribution company and approved by the State Corporation Commission.

"Gas utility" has the same meaning as provided in § 56-235.8.

"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

"Service provider" and "provider of billing services" have the same meanings as provided in subsection ~~E~~ *D* of § 58.1-2901, and "class" of consumers means a category of consumers defined as a class by their service provider.

K. Nothing in this section shall prohibit a locality from enacting an ordinance or other local law to allow such locality to impose a tax on consumers of natural gas provided by pipeline distribution

companies and gas utilities, beginning at such time as natural gas service is first made available in such locality. The maximum amount of tax imposed on residential consumers based on CCF delivered monthly to consumers shall not exceed $3 per month. The maximum tax rate imposed by such locality on nonresidential consumers based on CCF delivered monthly to consumers shall not exceed an average of the tax rates on nonresidential consumers of natural gas in effect (at the time natural gas service is first made available in such locality) in localities whose residents are being provided natural gas from the same pipeline distribution company or gas utility or both that is also providing natural gas to the residents of such locality. Beginning January 1, 2004, the tax rates for residential and nonresidential consumers of natural gas in such locality shall be determined in accordance with the provisions of subsection H.

§ 59.1-280. Enterprise zone business tax credit.

A. As used in this section:

"Business tax credit" means a credit against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~ of Title 58.1 due from a business firm.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of $15 million when such qualified zone investments result in the creation of at least 50 permanent full-time positions. "Qualified zone investment" and "permanent full-time position" shall have the meanings provided in subsection A of § 59.1-280.1.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm.

B. The Department shall certify annually to the Commissioner of the Department of Taxation~~, or in the case of business firms subject to tax under Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 to the Director of Public Service Taxation for the State Corporation Commission,~~ the applicability of the business tax credit provided herein for a qualified business firm. Any certification by the Department pursuant to this section shall not impair the authority of the Department of Taxation ~~or State Corporation Commission~~ to deny in whole or in part any claimed tax credit if the Department of Taxation ~~or State Corporation Commission~~ determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation ~~or State Corporation Commission~~ shall notify the Department in writing upon determining that a business firm is ineligible for such tax credit.

C. Small qualified business firms shall be allowed a business tax credit in an amount equal to 80 percent of the tax due to the Commonwealth for the first tax year and 60 percent of the tax due the Commonwealth for the second tax year through the tenth tax year.

D. Large qualified business firms shall be allowed a business tax credit in a percentage amount determined by agreement between the Department and the large qualified business firm, provided such percentage amounts shall not exceed the percentages provided for small qualified business firms as set forth in subsection C.

E. Any business tax credit not usable may not be applied to future tax years.

F. When a partnership or a small business corporation making an election pursuant to Subchapter S of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder shall be eligible for the tax credit provided for in this section on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively.

G. Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone. Any qualified business firm having taxable income from business activity both within and without the enterprise zone shall allocate and apportion its Virginia taxable income attributable to the conduct of business as follows:

1. The portion of a qualified business firm's Virginia taxable income allocated and apportioned to business activities within an enterprise zone shall be determined by multiplying its Virginia taxable income by a fraction, the numerator of which is the sum of the property factor and the payroll factor, and the denominator of which is two.

a. The property factor is a fraction. The numerator is the average value of real and tangible personal property of the business firm which is used in the enterprise zone. The denominator is the average value of real and tangible personal property of the business firm used everywhere in the Commonwealth.

b. The payroll factor is a fraction. The numerator is the total amount paid or accrued within the enterprise zone during the taxable period by the business firm for compensation. The denominator is the total compensation paid or accrued everywhere in the Commonwealth during the taxable period by the business firm for compensation.

2. The property factor and the payroll factor shall be determined in accordance with the procedures established in §§ 58.1-409 through 58.1-413 for determining the Virginia taxable income of a corporation having income from business activities which is taxable both within and without the

Commonwealth, mutatis mutandis.

3. If a qualified business firm believes that the method of allocation and apportionment hereinbefore prescribed as administered has operated or will operate to allocate or apportion to an enterprise zone a lesser portion of its Virginia taxable income than is reasonably attributable to business conducted within the enterprise zone, it shall be entitled to file with the Department of Taxation a statement of its objections and of such alternative method of allocation or apportionment as it believes to be appropriate under the circumstances with such detail and proof and within such time as the Department of Taxation may reasonably prescribe. If the Department of Taxation concludes that the method of allocation or apportionment employed is in fact inequitable or inapplicable, it shall redetermine the taxable income by such other method of allocation or apportionment as best seems calculated to assign to an enterprise zone the portion of the qualified business firm's Virginia taxable income reasonably attributable to business conducted within the enterprise zone.

H. Tax credits awarded under this section and under § 59.1-280.1 shall not exceed $7.5 million annually until the end of fiscal year 2019.

I. The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

§ 59.1-280.1. Enterprise zone real property investment tax credit.

A. As used in this section:

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of $100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions.

"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"Qualified zone improvements" means the amount expended for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) $50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. "Qualified zone expenditures" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury Regulations.

Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. Qualified zone improvements shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.

Qualified zone improvements shall not include:

1. The cost of acquiring any real property or building; however, the cost of any newly constructed depreciable nonresidential real property (excluding land, land improvements, paving, grading, driveways, and interest) shall be considered to be a qualified zone improvement eligible for the credit if the total amount of such expenditure is at least $250,000 with respect to a single facility.

2. (i) The cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; or (ix) the cost of any well or septic or sewer system.

3. The basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal

Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired or Internal Revenue Code § 1014 (a).

"Qualified zone investments" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property within an enterprise zone. For purposes of this section, machinery, tools and equipment shall only be deemed to include the cost of such property which is placed in service in the enterprise zone on or after July 1, 1995. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).

"Qualified zone resident" means an owner or tenant of real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business within the enterprise zone.

"Real property investment tax credit" means a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), *or* Article 1 (§ 58.1-2500 et seq.) of Chapter 25~~, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26~~ of Title 58.1.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident.

B. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a qualified zone resident shall be allowed a real property investment tax credit as set forth in this section.

C. For any small qualified zone resident, a real property investment tax credit shall be allowed in an amount equaling 30 percent of the qualified zone improvements. Any tax credit granted pursuant to this subsection is refundable; however, in no event shall the cumulative credit allowed to a small qualified zone resident pursuant to this subsection exceed $125,000 in any five-year period.

D. For any large qualified zone resident, a real property investment tax credit shall be allowed in an amount of up to five percent of such qualified zone investments. The percentage amount of the real property investment tax credit granted to a large qualified zone resident shall be determined by agreement between the Department and the large qualified zone resident, provided such percentage amount shall not exceed five percent. The real property investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.

E. The Department shall certify the nature and amount of qualified zone improvements and qualified zone investments eligible for a real property investment tax credit in any taxable year. Only qualified zone improvements and qualified zone investments that have been properly certified shall be eligible for the credit. Any form filed with the Department of Taxation or State Corporation Commission for the purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department. Any certification by the Department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the taxpayer is not entitled to such tax credit. The Department of Taxation or State Corporation Commission shall notify the Department in writing upon determining that a taxpayer is ineligible for such tax credit.

F. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" as used in this section means the partnership, limited liability company or S corporation. Credits granted to a partnership, limited liability company or S corporation shall be passed through to the partners, members or shareholders, respectively.

G. The Tax Commissioner shall have the authority to issue regulations relating to the computation and carryover of the credit provided under this section.

H. In the first taxable year only, the credit provided in this section shall be prorated equally against the taxpayer's estimated payments made in the third and fourth quarters and the final payment, if such taxpayer is required to make quarterly payments.

I. Tax credits awarded under this section and under § 59.1-280 shall not exceed $7.5 million annually until the end of fiscal year 2019.

J. The provisions of this section shall apply only as follows:

1. To those large qualified zone residents that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those large qualified zone residents that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005.

2. That §§ 15.2-5423, 58.1-440.1, 58.1-2035, 58.1-2601 through 58.1-2604, and 58.1-2606 through 58.1-2609, Article 2 (§§ 58.1-2620 through 58.1-2635) of Chapter 26 of Title 58.1, §§ 58.1-2656 and 58.1-2657, Article 6 (§§ 58.1-2660 through 58.1-2665) of Chapter 26 of Title 58.1, §§ 58.1-2670.1 and 58.1-2674.1, Article 8 (§§ 58.1-2680 through 58.1-2683) of Chapter 26 of Title 58.1, and § 58.1-3731 of the Code of Virginia are repealed.