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HOUSE BILL NO. 1343

Offered January 21, 2022

A BILL to amend and reenact §§ 58.1-320, 58.1-321, 58.1-322.03, 58.1-339.8, 58.1-602, 58.1-603, as it is currently effective and as it may become effective, 58.1-603.1, as it is currently effective and as it may become effective, 58.1-603.2, 58.1-604.01, as it is currently effective and as it may become effective, 58.1-605.1, 58.1-606.1, 58.1-609.5, 58.1-609.11, 58.1-611.1, 58.1-612, 58.1-623, 58.1-647, 58.1-648, and 63.2-527, relating to taxation in the Commonwealth.

Patron—Watts

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-320, 58.1-321, 58.1-322.03, 58.1-339.8, 58.1-602, 58.1-603, as it is currently effective and as it may become effective, 58.1-603.1, as it is currently effective and as it may become effective, 58.1-603.2, 58.1-604.01, as it is currently effective and as it may become effective, 58.1-605.1, 58.1-606.1, 58.1-609.5, 58.1-609.11, 58.1-611.1, 58.1-612, 58.1-623, 58.1-647, 58.1-648, and 63.2-527 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-320. Imposition of tax.

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

Two percent on income not exceeding \$3,000;

Three percent on income in excess of \$3,000, but not in excess of \$5,000;

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

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

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

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

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

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

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

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

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

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

B. For taxable years beginning on and after January 1, 2023, all amounts of income in this section shall be adjusted annually by a percentage, as determined by the Tax Commissioner and rounded to the nearest one-tenth of one percent, equal to the percentage increase in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the Bureau of Labor Statistics for the U.S. Department of Labor, or any successor index used in place of the C-CPI-U for computing the standard deduction for federal individual income tax purposes, from September 1 through August 31 for the year immediately preceding the affected taxable year. The Tax Commissioner shall round such amounts of income to the nearest dollar.

§ 58.1-321. Exemptions and exclusions.

A. No tax levied pursuant to § 58.1-320 is imposed, nor any return required to be filed, by:

1. A single individual where the Virginia adjusted gross income plus the modification specified in subdivision 5 of § 58.1-322.03 for such taxable year is less than \$11,650 for taxable years beginning on and after January 1, 2010, but before January 1, 2012.

a. A single individual where the Virginia adjusted gross income plus the modification specified in subdivision 5 of § 58.1-322.03 for such taxable year is less than \$11,950 for taxable years beginning on and after January 1, 2012.

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59 2. b. An individual and spouse if their combined Virginia adjusted gross income plus the
60 modification specified in subdivision 5 of § 58.1-322.03 is less than \$23,300 for taxable years beginning
61 on and after January 1, 2010 (or one-half of such amount in the case of a married individual filing a
62 separate return) but before January 1, 2012, and less than \$23,900 for taxable years beginning on and
63 after January 1, 2012 (or one-half of such amount in the case of a married individual filing a separate
64 return).

65 2. For the purposes of this section, "Virginia adjusted gross income" means federal adjusted gross
66 income for the taxable years with the modifications specified in §§ 58.1-322.01 and 58.1-322.02.

67 3. *For taxable years beginning on and after January 1, 2023, the amounts of Virginia adjusted gross*
68 *income referenced in subdivisions 1 a and b shall be adjusted annually by a percentage, as determined*
69 *by the Tax Commissioner and rounded to the nearest one-tenth of one percent, equal to the percentage*
70 *increase in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the*
71 *Bureau of Labor Statistics for the U.S. Department of Labor, or any successor index used in place of*
72 *the C-CPI-U for computing the standard deduction for federal individual income tax purposes, from*
73 *September 1 through August 31 for the year immediately preceding the affected taxable year. The Tax*
74 *Commissioner shall round such amounts of income to the nearest dollar.*

75 B. Persons in the Armed Forces of the United States stationed on military or naval reservations
76 within Virginia who are not domiciled in Virginia shall not be held liable to income taxation for
77 compensation received from military or naval service.

78 C. For taxable years beginning on and after January 1, 2020, but before January 1, 2026, any amount
79 that is includible in the federal adjusted gross income of an eligible veteran by reason of the whole or
80 partial discharge of any loan described in § 108(f)(5)(B) of the Internal Revenue Code shall be excluded
81 from Virginia adjusted gross income. This exclusion shall apply only to those discharges that (i) are
82 described in clauses (i), (ii), and (iii) of § 108(f)(5)(A) of the Internal Revenue Code and (ii) occur after
83 December 31, 2017. For the purposes of this subsection, "eligible veteran" means a veteran who has
84 been rated by the U.S. Department of Veterans Affairs, or its successor agency pursuant to federal law,
85 to have a 100 percent service-connected, permanent, and total disability.

86 **§ 58.1-322.03. Virginia taxable income; deductions.**

87 In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from Virginia
88 adjusted gross income as defined in § 58.1-321:

89 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
90 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
91 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
92 on such federal return and increased by an amount that, when added to the amount deducted under
93 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
94 such purposes at a rate of 18 cents per mile; or

95 b. Provided that the taxpayer has not itemized deductions for the taxable year on his federal income
96 tax return: (i) for taxable years beginning before January 1, 2019, ~~and on and after January 1, 2026,~~
97 \$3,000 for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a
98 married individual filing a separate return) ~~and;~~ (ii) for taxable years beginning on and after January 1,
99 2019, but before January 1, ~~2026~~ 2023, \$4,500 for single individuals and \$9,000 for married persons
100 (one-half of such amounts in the case of a married individual filing a separate return); ~~and (iii) for~~
101 ~~taxable years beginning on and after January 1, 2023, \$6,000 for single individuals and \$12,000 for~~
102 ~~married persons (one-half of such amounts in the case of a married individual filing a separate return).~~
103 For purposes of this section, any person who may be claimed as a dependent on another taxpayer's
104 return for the taxable year may compute the deduction only with respect to earned income. *For taxable*
105 *years beginning on and after January 1, 2023, the amounts of the deductions referenced in clause (iii)*
106 *shall be adjusted annually by a percentage, as determined by the Tax Commissioner and rounded to the*
107 *nearest one-tenth of one percent, equal to the percentage increase in the Chained Consumer Price Index*
108 *for All Urban Consumers (C-CPI-U), as published by the Bureau of Labor Statistics for the U.S.*
109 *Department of Labor, or any successor index used in place of the C-CPI-U for computing the standard*
110 *deduction for federal individual income tax purposes, from September 1 through August 31 for the year*
111 *immediately preceding the affected taxable year. The Tax Commissioner shall round such amounts of*
112 *income to the nearest dollar.*

113 2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for
114 federal income tax purposes.

115 b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be
116 entitled to an additional personal exemption in the amount of \$800.

117 The additional deduction for blind or aged taxpayers allowed under this subdivision shall be
118 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
119 tax purposes.

120 c. *For taxable years beginning on and after January 1, 2023, the amount of the exemptions*

referenced in subdivision a or b shall be adjusted annually by a percentage, as determined by the Tax Commissioner and rounded to the nearest one-tenth of one percent, equal to the percentage increase in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the Bureau of Labor Statistics for the U.S. Department of Labor, or any successor index used in place of the C-CPI-U for computing the standard deduction for federal individual income tax purposes, from September 1 through August 31 for the year immediately preceding the affected taxable year. The Tax Commissioner shall round such amounts of income to the nearest dollar.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided that the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. A deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

b. A deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the deduction shall be reduced by \$1 for every \$1 that the total combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision b, in no event shall the amount deducted in any taxable year exceed \$4,000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.

b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a college savings trust account, less any amounts previously deducted.

8. The total amount an individual 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, provided that the individual has not claimed a deduction for such amount on his federal income tax return.

9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. The amount an individual pays annually in premiums for long-term health care insurance,

provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.

11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

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

b. 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.

12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the U.S. Environmental Protection Agency and the U.S. Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

13. The lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided that the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or older with earned income of at least \$20,000 for the year and federal adjusted gross income not in excess of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. As used in this subdivision, "earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.

15. For taxable years beginning on and after January 1, 2018, 20 percent of business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this subdivision, "business interest" means the same as that term is defined under § 163(j) of the Internal Revenue Code.

16. For taxable years beginning on and after January 1, 2019, the actual amount of real and personal property taxes imposed by the Commonwealth or any other taxing jurisdiction not otherwise deducted solely on account of the dollar limitation imposed on individual deductions by § 164(b)(6)(B) of the Internal Revenue Code.

17. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to \$100,000 of the amount that is not deductible when computing federal adjusted gross income solely on account of the portion of subdivision B 10 of § 58.1-301 related to Paycheck Protection Program loans.

§ 58.1-339.8. Income tax credit for low-income taxpayers.

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

"Family Virginia adjusted gross income" means the combined Virginia adjusted gross income of an individual, the individual's spouse, and any person claimed as a dependent on the individual's or his spouse's income tax return for the taxable year.

"Household" means an individual or, in the case of married individuals, an individual and his spouse, regardless of whether the individual and his spouse file combined or separate Virginia

individual income tax returns.

"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.

"Virginia adjusted gross income" has the same meaning as the term is defined in § 58.1-321.

B. 1. For taxable years beginning on and after January 1, 2000, any individual or persons filing a joint return whose family Virginia adjusted gross income does not exceed 100 percent of the poverty guideline amount corresponding to a household of an equal number of persons as listed in the poverty guidelines published during such taxable year, shall be allowed a credit against the tax levied pursuant to § 58.1-320 in an amount equal to \$300 each for the individual, the individual's spouse, and any person claimed as a dependent on the individual's or married individuals' income tax return for the taxable year. For any taxable year in which married individuals file separate Virginia income tax returns, the credit provided under this section shall be allowed against the tax for only one of such two tax returns. Additionally, the credit provided under this section shall not be allowed against such tax of a dependent of the individual or of married individuals.

2. For taxable years beginning on and after January 1, 2006, any individual or married individuals, eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu of the credit authorized under subdivision B 1, claim a credit against the tax imposed pursuant to § 58.1-320 in an amount equal to 20 percent of the credit claimed by the individual or married individuals for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year. In no case shall a household be allowed a credit pursuant to this subdivision and subdivision B 1 for the same taxable year.

For the purpose of this subdivision, "household" means an individual and, in the case of married individuals, the individual and his spouse regardless of whether or not the individual and his spouse file combined or separate Virginia individual income tax returns.

C. 1. The amount of the credit provided claimed pursuant to subsection subdivision B 1 or, in the case of a nonresident or a person to which § 58.1-303 applies, subdivision B 2 for any taxable year shall not exceed the individual's or married individuals' Virginia income tax liability.

2. For taxable years beginning before January 1, 2022, the amount of credit claimed pursuant to subdivision B 2 shall not exceed a resident individual's or married individuals' Virginia income tax liability.

3. For taxable years beginning on and after January 1, 2022, a portion of the credit provided pursuant to subdivision B 2 in excess of a resident individual's or married individuals' Virginia income tax liability shall be refundable as specified in subdivisions a through k. The refundable portion of the credit shall be claimed on the Virginia income tax return and redeemed by the Tax Commissioner. The refundable portion of the credit provided pursuant to subdivision B 2 shall be as follows:

a. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, 50 percent of such credit.

b. For taxable years beginning on and after January 1, 2023, but before January 1, 2024, 55 percent of such credit.

c. For taxable years beginning on and after January 1, 2024, but before January 1, 2025, 60 percent of such credit.

d. For taxable years beginning on and after January 1, 2025, but before January 1, 2026, 65 percent of such credit.

e. For taxable years beginning on and after January 1, 2026, but before January 1, 2027, 70 percent of such credit.

f. For taxable years beginning on and after January 1, 2027, but before January 1, 2028, 75 percent of such credit.

g. For taxable years beginning on and after January 1, 2028, but before January 1, 2029, 80 percent of such credit.

h. For taxable years beginning on and after January 1, 2029, but before January 1, 2030, 85 percent of such credit.

i. For taxable years beginning on and after January 1, 2030, but before January 1, 2031, 90 percent of such credit.

j. For taxable years beginning on and after January 1, 2031, but before January 1, 2032, 95 percent of such credit.

k. For taxable years beginning on and after January 1, 2032, 100 percent of such credit.

D. Notwithstanding any other provision of this section, no credit shall be allowed pursuant to subsection B in any taxable year in which the individual, the individual's spouse, or both, or any person claimed as a dependent on such individual's or married individuals' income tax return, claims one or any combination of the following on his or their income tax return for such taxable year:

- 305 1. The subtraction under subdivision 8 of § 58.1-322.02;
306 2. The subtraction under subdivision 15 of § 58.1-322.02;
307 3. The subtraction under subdivision 16 of § 58.1-322.02;
308 4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision
309 2 b of § 58.1-322.03; or
310 5. The deduction under subdivision 5 of § 58.1-322.03.

311 **§ 58.1-602. Definitions.**

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

313 "Accommodations" means any room or rooms, lodgings, or accommodations in any hotel, motel, inn,
314 tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or
315 accommodations are regularly furnished to transients for a consideration.

316 "Accommodations fee" means the room charge less the discount room charge, if any, provided that
317 the accommodations fee shall not be less than \$0.

318 "Accommodations intermediary" means any person other than an accommodations provider that
319 facilitates the sale of an accommodation, charges a room charge to the customer, and charges an
320 accommodations fee to the customer, which fee it retains as compensation for facilitating the sale. For
321 purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way
322 arranging for the purchase of the right to use accommodations via a transaction directly, including via
323 one or more payment processors, between a customer and an accommodations provider.

324 "Accommodations intermediary" does not include a person:

325 1. If the accommodations are provided by an accommodations provider operating under a trademark,
326 trade name, or service mark belonging to such person; or

327 2. Who facilitates the sale of an accommodation if (i) the price paid by the customer to such person
328 is equal to the price paid by such person to the accommodations provider for the use of the
329 accommodations and (ii) the only compensation received by such person for facilitating the sale of the
330 accommodation is a commission paid from the accommodations provider to such person.

331 "Accommodations provider" means any person that furnishes accommodations to the general public
332 for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to
333 use or possess.

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

339 "Affiliate" means the same as such term is defined in § 58.1-439.18.

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

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

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

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

353 "*Digital personal property*" means digital products delivered electronically, including software,
354 digital audio and audiovisual products, reading materials, and other data or applications, that the
355 purchaser owns or has the ability to continually access, whether by downloading, streaming, or
356 otherwise accessing the content, without having to pay an additional subscription or usage fee to the
357 seller after paying the initial purchase price.

358 "Discount room charge" means the full amount charged by the accommodations provider to the
359 accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.

360 "Distribution" means the transfer or delivery of a taxable service or tangible personal property for
361 use, consumption, or storage by the distributee, and the use, consumption, or storage of a taxable
362 service or tangible personal property by a person that has processed, manufactured, refined, or converted
363 such taxable service or tangible personal property, but does not include the transfer or delivery of
364 tangible personal property for resale or any use, consumption, or storage otherwise exempt under this
365 chapter.

366 "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental

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

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

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

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

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

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected worldwide network of computer networks.

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

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

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

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

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

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

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

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

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

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

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

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

452 "Qualifying locality" means Charlotte County, Gloucester County, Halifax County, Henry County,
453 Mecklenburg County, Northampton County, Patrick County, Pittsylvania County, or the City of Danville.

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

457 "Remote seller" means any dealer deemed to have sufficient activity within the Commonwealth to
458 require registration under § 58.1-613 under the criteria specified in subdivision C 10 or 11 of
459 § 58.1-612 or any software provider acting on behalf of such dealer.

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

466 The terms "retail sale" and a "sale at retail" specifically include the following: (i) the sale or charges
467 for any accommodations furnished to transients for less than 90 continuous days; (ii) sales of tangible
468 personal property to persons for resale when because of the operation of the business, or its very nature,
469 or the lack of a place of business in which to display a certificate of registration, or the lack of a place
470 of business in which to keep records, or the lack of adequate records, or because such persons are
471 minors or transients, or because such persons are engaged in essentially service businesses, or for any
472 other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of
473 policing such business operations; (iii) the separately stated charge made for automotive refinish repair
474 materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the
475 separately stated charge for equipment available for lease or purchase by a provider of satellite television
476 programming to the customer of such programming. Equipment sold to a provider of satellite television
477 programming for subsequent lease or purchase by the customer of such programming shall be deemed a
478 sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or
479 sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible
480 personal property to such persons and may refuse to issue certificates of registration to such persons.
481 The terms "retail sale" and a "sale at retail" also specifically include the separately stated charge made
482 for supplies used during automotive repairs whether or not there is transfer of title or possession of the
483 supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies
484 by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for
485 resale.

486 The term "transient" does not include a purchaser of camping memberships, time-shares,
487 condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in,
488 real estate, however created or sold and whether registered with the Commonwealth or not. Further, a
489 purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a

specific real estate project on an ongoing basis throughout its term shall not be deemed a transient, provided, however, that the term or time period involved is for seven years or more.

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

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

"Room charge" means the full retail price charged to the customer by the accommodations intermediary for the use of the accommodations, including any accommodations fee, before taxes. The room charge shall be determined in accordance with 23VAC10-210-730 and the related rulings of the Department on the same.

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

"Sales price" means the total amount for which *taxable services or* tangible personal property ~~or services are~~ is sold, including any *taxable* services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever.

"Sales price" does not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

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

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

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

"Streaming" means a method of transmitting or receiving video and audio data over a computer network as a steady, continuous flow, allowing playback to proceed while subsequent data is being received.

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

551 "Taxable service" means any of the following services used or consumed in the Commonwealth:

- 552 1. Admissions charged for attendance at any event or place of amusement or entertainment;
- 553 2. Charges to use any recreation, fitness, or sports facilities, including membership fees and dues;
- 554 3. Nonmedical personal services or counseling, including (i) hair care, nail care, skin care,
- 555 cosmetology, beauty, tanning, exercise, nutrition, weight control, sensory stimulation, or relaxation
- 556 services or counseling and (ii) piercing, tattooing, exfoliation, implants, and other cosmetic body
- 557 modifications. Nonmedical personal services or counseling shall not include surgical procedures or
- 558 separately billed services that must be performed by or under the direction of a person licensed or
- 559 certified by a board within the Department of Health Professions, pursuant to Subtitle III (§ 54.1-2400
- 560 et seq.) of Title 54.1;
- 561 4. Dry cleaning and laundry services, and garment and shoe repairs and alterations;
- 562 5. Companion animal care, including grooming, boarding, walking, training, and feeding.
- 563 Companion animal care shall not include veterinary medical procedures or separately billed services
- 564 that must be performed by or under the direction of a person licensed or certified by the Board of
- 565 Veterinary Medicine pursuant to Chapter 38 (§ 54.1-3800 et seq.) of Title 54.1;
- 566 6. Residential home repair or maintenance, including carpentry, painting, plumbing, electrical, and
- 567 HVAC, when the work performed does not require a state or local permit and is paid for directly by a
- 568 resident or homeowner;
- 569 7. Residential landscaping services, including landscaping design and maintenance, lawn services, or
- 570 tree removal, when paid for directly by a resident or homeowner;
- 571 8. Residential cleaning services, including housekeeping, rug cleaning, upholstery cleaning and
- 572 dyeing, window cleaning, power washing, and servicing of swimming pools, when paid for directly by a
- 573 resident or homeowner;
- 574 9. Vehicle and engine repair, maintenance, cleaning, painting, and remodeling;
- 575 10. Repairs or alterations to tangible personal property or the functioning thereof, including
- 576 appliances, electronics, computers, jewelry, watches, musical instruments, and art;
- 577 11. Delivery or shipping services, including wrapping and packing;
- 578 12. Storage of tangible personal property, including climate-controlled storage and self-storage;
- 579 13. Travel, event, and aesthetic planning services that are separately billed from the sale of product,
- 580 including travel agents, event planning, catering, and interior design services; and
- 581 14. Communications services that are not subject to the tax imposed pursuant to Chapter 6.2
- 582 (§ 58.1-645 et seq.) and are not digital personal property. For purposes of this subdivision,
- 583 "communications services" means the same as that term is defined in § 58.1-647.

584 "Taxable service" does not include any service otherwise exempt under this chapter.

585 "Use" means the exercise of any right or power over tangible personal property incident to the

586 ownership thereof, except that it does not include the sale at retail of that property in the regular course

587 of business. "Use" does not include the exercise of any right or power, including use, distribution, or

588 storage, over any tangible personal property sold to a nonresident donor for delivery outside of the

589 Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the

590 Commonwealth via mail or telephone. "Use" does not include any sale determined to be a gift

591 transaction, subject to tax under § 58.1-604.6.

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

593 this section.

594 "Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to

595 those activities that are an integral part of the production of a product, including all steps of an

596 integrated manufacturing or mining process, but not including ancillary activities such as general

597 maintenance or administration. When used in relation to mining, "used directly" refers to the activities

598 specified in this definition and, in addition, any reclamation activity of the land previously mined by the

599 mining company required by state or federal law.

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

601 "Video programming" means video and/or information programming provided by or generally

602 considered comparable to programming provided by a cable operator, including, but not limited to,

603 Internet service.

604 **§ 58.1-603. (Contingent expiration date) Imposition of sales tax.**

605 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now

606 imposed by law, a license or privilege tax upon every person who engages in the business of selling at

607 retail or, distributing, leasing, renting, or furnishing taxable services or tangible personal property in this

608 Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or

609 who stores for use or consumption in this Commonwealth any item or article of tangible personal

610 property as defined in this chapter, or who leases or rents such property within this Commonwealth, in

611 the amount of 4.3 percent:

- 612 1. Of the gross sales price of each taxable service or item or article of tangible personal property

when sold at retail ~~or~~, distributed, *or furnished* in this Commonwealth.

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

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

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

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

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

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail ~~or~~, distributing, *leasing, renting, or furnishing taxable services or* tangible personal property in this Commonwealth; ~~or who rents or furnishes any of the things or services taxable under this chapter,~~ or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter; ~~or who leases or rents such property within this Commonwealth,~~ in the amount of ~~three and one-half~~ 3.5 percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

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

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

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

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

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

§ 58.1-603.1. (Contingent expiration date) Additional state sales tax in certain counties and cities.

A. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in Planning District 15 established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 a retail sales tax at the rate of 0.70 percent. In no case shall an additional sales tax be imposed pursuant to both clause (ii) of subsection A and this subsection.

C. The tax imposed pursuant to subsections A and B ~~shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § 58.1-603.~~

D. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-2600. In the case of Planning District 15, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-3701. For additional planning districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-603.1. (Contingent expiration date) Additional state sales tax in certain counties and cities.

674 In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in
675 each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et
676 seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by
677 the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and
678 has a total transit ridership of not less than 15 million riders per year across all transit systems within
679 the Planning District or (ii) as shown by the most recent United States Census meets the population
680 criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in
681 clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant
682 to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year
683 in which all of the criteria have been met. ~~Such tax shall not be levied upon food purchased for human~~
684 ~~consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~ Such
685 tax shall be added to the rate of the state sales tax imposed pursuant to § 58.1-603 in each such county
686 and city and shall be subject to all the provisions of this chapter and the rules and regulations published
687 with respect thereto. No discount under § 58.1-622 shall be allowed for the tax imposed under this
688 section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and
689 subject to the same penalties as provided for the state sales tax under § 58.1-603.

690 The revenue generated and collected pursuant to the tax authorized under this section, less the
691 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds
692 established by law. In the case of Planning District 8, the revenue generated and collected therein shall
693 be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue
694 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For
695 additional Planning Districts that may become subject to this section, funds shall be established by
696 appropriate legislation.

697 **§ 58.1-603.2. (For contingent expiration date, see Acts 2018, c. 850) Additional state sales and**
698 **use tax in certain counties and cities of historic significance; Historic Triangle Marketing Fund.**

699 A. For purposes of this section, "Historic Triangle" means all of the City of Williamsburg and the
700 Counties of James City and York.

701 B. In addition to the sales tax imposed pursuant to §§ 58.1-603 and 58.1-603.1, there is hereby
702 levied and imposed in the Historic Triangle a retail sales tax at the rate of one percent. ~~Such tax shall~~
703 ~~not be levied upon food purchased for human consumption and essential personal hygiene products, as~~
704 ~~such terms are defined in § 58.1-611.1.~~ Such tax shall be added to the rate of the state sales tax imposed
705 pursuant to §§ 58.1-603 and 58.1-603.1 in each such county and city and shall be subject to all the
706 provisions of this chapter and the rules and regulations published with respect thereto. No discount
707 under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered
708 and collected by the Tax Commissioner in the same manner and subject to the same penalties as
709 provided for the state sales tax under § 58.1-603.

710 C. In addition to the use tax imposed pursuant to §§ 58.1-604 and 58.1-604.01, there is hereby levied
711 and imposed in the Historic Triangle a retail use tax at the rate of one percent. ~~Such tax shall not be~~
712 ~~levied upon food purchased for human consumption and essential personal hygiene products, as such~~
713 ~~terms are defined in § 58.1-611.1.~~ Such tax shall be added to the rate of the state use tax imposed
714 pursuant to §§ 58.1-604 and 58.1-604.01 in each such county and city and shall be subject to all the
715 provisions of this chapter and the rules and regulations published with respect thereto. No discount
716 under § 58.1-622 shall be allowed for the tax imposed under this section. Such tax shall be administered
717 and collected by the Tax Commissioner in the same manner and subject to the same penalties as
718 provided for the state use tax under § 58.1-604.

719 D. The revenue generated and collected pursuant to the tax authorized under this section, less the
720 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller as follows:

721 1. Fifty percent of the revenues shall be deposited into the Historic Triangle Marketing Fund created
722 pursuant to subsection E and used for the purposes set forth therein; and

723 2. Fifty percent of the revenues shall be deposited into a special fund hereby created on the books of
724 the Comptroller under the name "Collections of Historic Triangle Sales Tax" and distributed to the
725 locality in which the sales or use tax was collected. The revenues received by a locality pursuant to this
726 subsection shall not be used to reduce the amount of other revenues appropriated by such locality to or
727 for use by the Greater Williamsburg Chamber and Tourism Alliance below the amount provided in fiscal
728 year 2018.

729 E. 1. There is hereby created in the state treasury a special nonreverting fund to be known as the
730 Historic Triangle Marketing Fund, referred to in this section as "the Fund," to be managed and
731 administered by the Tourism Council of the Greater Williamsburg Chamber and Tourism Alliance. The
732 Fund shall be established on the books of the Comptroller. All revenues generated pursuant to this
733 section shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the
734 Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including
735 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the

Fund. Moneys in the Fund shall be used solely for the purposes of marketing, advertising, and promoting the Historic Triangle area as an overnight tourism destination, with the intent to attract visitors from a sufficient distance so as to require an overnight stay of at least one night, as set forth in this subsection. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Secretary of Finance.

2. The Tourism Council of the Greater Williamsburg Chamber and Tourism Alliance (the Council) shall consist of members as follows: one member of the James City County Board of Supervisors, one member of the York County Board of Supervisors; one member of the Williamsburg City Council, one representative of the Colonial Williamsburg Foundation, one representative of the Jamestown-Yorktown Foundation, one representative of Busch Gardens Williamsburg, one representative of Historic Jamestowne, one representative of the Williamsburg Hotel and Motel Association, and one representative of the Williamsburg Area Restaurant Association. The Chief Executive Officer of the Virginia Tourism Alliance and the Chief Executive Officer of the Virginia Tourism Corporation shall serve as ex officio, non-voting members of the Council.

3. The Council shall establish the Historic Triangle Office of Marketing and Promotion (the Office) to administer a program of marketing, advertising, and promotion to attract visitors to the Historic Triangle area, as required by this subsection. The Council shall use moneys in the Fund to fund the pay for necessary expenses of the Office and to fund the activities of the Office. The Office shall be overseen by a professional with extensive experience in marketing or advertising and in the tourism industry. The Office shall be responsible for (i) developing and implementing, in consultation with the Council, long-term and short-term strategic plans for advertising and promoting the numerous facilities, venues, and attractions devoted to education, historic preservation, amusement, entertainment, and dining in the Historic Triangle as a cohesive and unified travel destination for local, national, and international travelers; (ii) assisting, upon request, with the coordination of cross-advertising and cross-marketing efforts between various tourism venues and destinations in the Historic Triangle region; (iii) identifying strategies for both increasing the number of overnight visitors to the region and increasing the average length of stay of tourists in the region; and (iv) performing any other function related to the promotion of the Historic Triangle region as may be identified by the Council.

4. The Council shall report annually on its long-term and short-term strategic plans and the implementation of such plans; marketing efforts; metrics regarding tourism in the Historic Triangle region; use of the funds in the Fund; and any other details relevant to the work of the Council and the Office. Such report shall be delivered no later than December 1 of each year to the managers or chief executive officers of the City of Williamsburg and the Counties of James City and York, and to the Chairmen of the House Committees on Finance and Appropriations and the Senate Committee on Finance and Appropriations.

§ 58.1-604.01. (For contingent expiration dates, see Acts 2013, c. 766, and Acts 2020, c. 1235) Additional state use tax in certain counties and cities.

A. In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.

B. In addition to the sales tax imposed pursuant to § 58.1-603, there is hereby levied and imposed in each county and city located in Planning District 15 established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 a retail use tax at the rate of 0.70 percent. In no case shall an additional use tax be imposed pursuant to both clause (ii) of subsection A and this subsection.

C. The tax imposed pursuant to subsections A and B shall not be levied upon food purchased for human consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such tax shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § 58.1-604.

D. The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall

800 be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue
801 generated and collected therein shall be deposited into the fund established in § 33.2-2600. In the case
802 of Planning District 15, the revenue generated and collected therein shall be deposited into the fund
803 established in § 33.2-3701. For any additional planning districts that may become subject to this section,
804 funds shall be established by appropriate legislation.

805 **§ 58.1-604.01. (For contingent effective date, see Acts 2020, c. 1235; for contingent expiration**
806 **date, see Acts 2013, c. 766) Additional state use tax in certain counties and cities.**

807 In addition to the use tax imposed pursuant to § 58.1-604, there is hereby levied and imposed in each
808 county and city located in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of
809 Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most
810 recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a
811 total transit ridership of not less than 15 million riders per year across all transit systems within the
812 Planning District or (ii) as shown by the most recent United States Census meets the population criteria
813 set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i),
814 a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause
815 (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which
816 all of the criteria have been met. ~~Such tax shall not be levied upon food purchased for human~~
817 ~~consumption and essential personal hygiene products, as such terms are defined in § 58.1-611.1. Such~~
818 tax shall be added to the rate of the state use tax imposed pursuant to § 58.1-604 in such county and
819 city and shall be subject to all the provisions of this chapter and the rules and regulations published with
820 respect thereto. No discount under § 58.1-622 shall be allowed for the tax described under this section.
821 Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject
822 to the same penalties as provided for the state use tax under § 58.1-604.

823 The revenue generated and collected pursuant to the tax authorized under this section, less the
824 applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds
825 established by law. In the case of Planning District 8, the revenue generated and collected therein shall
826 be deposited into the fund established in § 33.2-2509. In the case of Planning District 23, the revenue
827 generated and collected therein shall be deposited into the fund established in § 33.2-2600. For any
828 additional Planning Districts that may become subject to this section, funds shall be established by
829 appropriate legislation.

830 **§ 58.1-605.1. Additional local sales tax in certain localities; use of revenues for construction or**
831 **renovation of schools.**

832 A. 1. In addition to the sales tax authorized under § 58.1-605, a qualifying locality may levy a
833 general retail sales tax at a rate not to exceed one percent as determined by its governing body to
834 provide revenue solely for capital projects for the construction or renovation of schools in each such
835 locality. Such tax shall be added to the rates of the state and local sales tax imposed by this chapter and
836 shall be subject to all the provisions of this chapter and the rules and regulations published with respect
837 thereto. No discount under § 58.1-622 shall be allowed on this local sales tax.

838 2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the construction
839 or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans
840 shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be
841 financed by bonds or loans, on a date chosen by the governing body and specified in any resolution
842 passed pursuant to the provisions of subdivision B 1. Such expiration date shall not be more than 20
843 years after the date of the resolution passed pursuant to the provisions of subdivision B 1.

844 B. 1. This tax may be levied only if the tax is approved in a referendum within the qualifying
845 locality held in accordance with § 24.2-684 and initiated by a resolution of the local governing body.
846 Such resolution shall state (i) if the capital projects for the construction or renovation of schools are to
847 be financed by bonds or loans, the date by which such bonds or loans shall be repaid or (ii) if the
848 capital projects for the construction or renovation of schools are not to be financed by bonds or loans, a
849 specified date on which the sales tax shall expire.

850 2. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general
851 circulation in the qualifying locality once a week for three consecutive weeks prior to the election. The
852 question on the ballot for the referendum shall include language stating (i) that the revenues from the
853 sales tax shall be used solely for capital projects for the construction or renovation of schools and (ii)
854 the date on which the sales tax shall expire.

855 C. The governing body of the qualifying locality, if it elects to impose a local sales tax under this
856 section after approval at a referendum as provided in subsection B shall do so by the adoption of an
857 ordinance stating its purpose and referring to this section and providing that such ordinance shall be
858 effective on the first day of a month at least 120 days after its adoption. Such ordinance shall state the
859 date on which the sales tax shall expire. A certified copy of such ordinance shall be forwarded to the
860 Tax Commissioner so that it will be received within five days after its adoption.

861 D. Any local sales tax levied under this section shall be administered and collected by the Tax

Commissioner in the same manner and subject to the same exemptions and penalties as provided for the state sales tax; ~~however, the local sales tax levied under this section shall not be levied on food purchased for human consumption or essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund that is hereby created on the Comptroller's books for each qualifying locality under the name "Collections of Additional Local Sales Taxes in ____ (INSERT NAME OF THE QUALIFYING LOCALITY)." Each fund shall be administered as provided in § 58.1-605. A separate fund shall be created for each qualifying locality. Only local sales tax moneys collected in that qualifying locality shall be deposited in that locality's fund.

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

G. The revenues from this tax shall be used solely for capital projects for new construction or major renovation of schools in the qualifying locality, including bond and loan financing costs related to such construction or renovation.

§ 58.1-606.1. Additional local use tax in certain localities; use of revenues for construction or renovation of schools.

A. 1. The governing body of a qualifying locality may levy a use tax at the rate of such sales tax under § 58.1-605.1 to provide revenue for capital projects for the construction or renovation of schools in such locality. Such tax shall be added to the rates of the state and local use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § 58.1-622 shall be allowed on a local use tax.

2. Any tax imposed pursuant to this section shall expire (i) if the capital projects for the construction or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be financed by bonds or loans, on a date chosen by the governing body and specified in any resolution passed pursuant to the provisions of subsection B. Such expiration date shall not be more than 20 years after the date of the resolution passed pursuant to the provisions of subsection B.

B. The governing body of the qualifying locality, if it elects to impose a local use tax under this section may do so only if it has previously imposed the local sales tax authorized by § 58.1-605.1, by the adoption of an ordinance stating its purpose and referring to this section and providing that the local use tax shall become effective on the first day of a month at least 120 days after its adoption. Such ordinance shall state the date on which the use tax shall expire. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same exemptions and penalties as provided for the state use tax; ~~however, the local use tax levied under this section shall not be levied on food purchased for human consumption or essential personal hygiene products, as such terms are defined in § 58.1-611.1.~~

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the locality of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the locality of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased outside the Commonwealth for use or consumption within the locality imposing the local use tax, or stored within the locality for use or consumption, where the property would have been subject to the sales tax if it had been purchased within the Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is outside the Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to the Commonwealth shall, to the extent reasonably practicable, in filing their monthly

920 use tax returns with the Tax Commissioner, break down their shipments into the Commonwealth by
921 counties and cities so as to show the county or city of destination. If, however, the out-of-state dealer is
922 unable accurately to assign any shipment to a particular county or city, the local use tax on the tangible
923 personal property involved shall be remitted to the Commonwealth by such dealer without attempting to
924 assign the shipment to any county or city.

925 F. Local use tax revenue shall be deposited in the special fund established pursuant to subsection E
926 of § 58.1-605.1. The Comptroller shall distribute the revenue to the qualifying locality.

927 G. All revenue from this local use tax revenue shall be used solely for capital projects for new
928 construction or major renovation of schools in the qualifying locality, including bond and loan financing
929 costs related to such construction or renovation.

930 **§ 58.1-609.5. Service exemptions.**

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

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

938 2. An amount separately charged for labor or services rendered in installing, applying, remodeling, or
939 repairing property sold or rented *Health care services. For purposes of this section, "health care
940 services" means services that must be provided by or under the direction of persons who must be
941 licensed or certified by a board within the Department of Health Professions, pursuant to Subtitle III
942 (§ 54.1-2400 et seq.) of Title 54.1.*

943 2. Professional services, including education or training, legal, financial, accounting and tax
944 preparation, real estate, engineering, architectural, or insurance services.

945 3. Services performed by a person who does not receive more than \$2,500 per year in gross receipts
946 for performance of such services.

947 4. Services that provide Internet access service as that term is defined in § 58.1-647.

948 5. Transportation charges separately stated.

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

950 5. 6. Charges for gift wrapping services performed by a nonprofit organization.

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

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

954 8. 7. The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients
955 for more than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds,
956 club, or any other place in which rooms, lodging, space or accommodations are regularly furnished to
957 transients for a consideration.

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

963 8. Residential cleaning, home repair or maintenance, or landscaping services that are purchased by
964 a homeowners' association or similar entity or by a landlord for the benefit of his tenant.

965 **§ 58.1-609.11. Exemptions for nonprofit entities.**

966 A. For purposes of this section, "nonprofit organization" or "nonprofit entity" means an entity that
967 meets the requirements of subsection D. "Nonprofit organization" or "nonprofit entity" includes a single
968 member limited liability company whose sole member is a nonprofit organization.

969 B. Any nonprofit organization that holds a valid certificate of exemption from the Department of
970 Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts
971 it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to
972 § 58.1-609.4, 58.1-609.7, 58.1-609.8, 58.1-609.9, or 58.1-609.10, as such sections are in effect on June
973 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and
974 conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1,
975 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that
976 were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were
977 exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and
978 procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such
979 entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt
980 under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to
981 maintain or renew an exemption for the period of time set forth in subsection G, each entity must

follow the procedures set forth in subsection C and meet the criteria set forth in subsection D. Provided, however, that any entity that was exempt from collecting sales and use tax shall continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection C and meets the criteria set forth in subsection D. Provided further, however, that an educational institution doing business in the Commonwealth which provides a face-to-face educational experience in American government and was exempt pursuant to subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it follows the other procedures set forth in subsection C and meets the criteria set forth in subsection D.

C. 1. On and after July 1, 2004, in addition to the organizations described in subsection B, and except as restricted in subdivision 2, the tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to purchases of *taxable services* or tangible personal property for use or consumption by any nonprofit entity that, pursuant to this section, (i) files an appropriate application with the Department of Taxation, (ii) meets the applicable criteria, and (iii) is issued a certificate of exemption from the Department of Taxation for the period of time covered by the certificate.

2. If the entity that is exempt under this section is exempt from federal income tax under § 501(c)(19) of the Internal Revenue Code, or has annual gross receipts of less than \$5,000 and is organized for at least one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code, then the exemption under this section for such entity shall not apply to purchases of *taxable services* or tangible personal property that are used primarily (i) for social and recreational activities for members or (ii) for providing insurance benefits to members or members' dependents.

D. To qualify for the exemption under subsection C, a nonprofit entity must meet the applicable criteria under this subsection as follows:

1. a. The entity is exempt from federal income taxation (i) under § 501(c)(3) of the Internal Revenue Code; (ii) under § 501(c)(4) of the Internal Revenue Code and is organized for a charitable purpose; or (iii) under § 501(c)(19) of the Internal Revenue Code; or

b. The entity has annual gross receipts of less than \$5,000, and the entity is organized for at least one of the purposes set forth in § 501(c)(3) of the Internal Revenue Code, one of the charitable purposes set forth in § 501(c)(4) of the Internal Revenue Code, or one of the purposes set forth in § 501(c)(19) of the Internal Revenue Code; and

2. The entity is in compliance with all applicable state solicitation laws and, where applicable, provides appropriate verification of such compliance; and

3. The entity's annual general administrative costs, including salaries and fundraising, relative to its annual gross revenue, under generally accepted accounting principles, is not greater than 40 percent; and

4. If the entity's gross annual revenue was at least \$750,000 in the previous year, then the entity must provide a financial review performed by an independent certified public accountant. However, for any entity with gross annual revenue of at least \$1 million in the previous year, the Department may require that the entity provide a financial audit performed by an independent certified public accountant. If the Department specifically requires an entity with gross annual revenue of at least \$1 million in the previous year to provide a financial audit performed by an independent certified public accountant, then the entity shall provide such audit in order to qualify for the exemption under this section, which audit shall be in lieu of the financial review; and

5. If the entity filed a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then it must provide a copy of such form to the Department of Taxation; and

6. If the entity did not file a federal 990 or 990 EZ tax form, or the successor forms to such forms, with the Internal Revenue Service, then the entity must provide the following information:

a. A list of the Board of Directors or other responsible agents of the entity, composed of at least two individuals, with names and addresses where the individuals physically can be found; and

b. The location where the financial records of the entity are available for public inspection.

E. On and after July 1, 2004, in addition to the criteria set forth in subsection D, the Department of Taxation shall ask each entity for the total taxable purchases made in the preceding year, unless such records are not available through no fault of the entity. If the records are not available through no fault of the entity, then the entity must provide such information to the Department the following year. No information provided pursuant to this subsection (except the failure to provide available information) shall be a basis for the Department of Taxation to refuse to exempt an entity.

F. Any entity that is determined under subsections C, D, and E by the Department of Taxation to be exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its election, if (i) the entity is within the same class of organization of any entity that was exempt from

collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster, sponsor, and promote physical education, athletic programs, and contests for youths in the Commonwealth.

G. The duration of each exemption granted by the Department of Taxation shall be no less than five years and no greater than seven years. During the period of such exemption, the failure of an exempt entity to maintain compliance with the applicable criteria set forth in subsection D shall constitute grounds for revocation of the exemption by the Department. At the end of the period of such exemption, to maintain or renew the exemption, each entity must provide the Department of Taxation the same information as required upon initial exemption and meet the same criteria.

H. For purposes of this section, the Department of Taxation and the Department of Agriculture and Consumer Services shall be allowed to share information when necessary to supplement the information required.

§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption and essential personal hygiene products.

A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption and essential personal hygiene products shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption and essential personal hygiene products pursuant to §§ 58.1-605 and 58.1-606. *On and after July 1, 2022, no tax shall be imposed under this chapter, or pursuant to any authority granted under this chapter, on food purchased for human consumption or essential personal hygiene products.*

C. B. 1. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

2. As used in this section, "essential personal hygiene products" means (i) nondurable incontinence products such as diapers, disposable undergarments, pads, and bed sheets and (ii) menstrual cups and pads, pantyliners, sanitary napkins, tampons, and other products used to absorb or contain menstrual flow. "Essential personal hygiene products" does not include any item that is otherwise exempt pursuant to this chapter.

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

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

B. As used in this chapter, "dealer" includes every person that:

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

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

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

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

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

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

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

a dealer under § 58.1-613; or

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

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

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

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

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

4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods sold by him;

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

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

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

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

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

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

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

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

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

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

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

3. Activities in connection with the printing contract with the person performed by or on behalf of

that person at the Virginia premises of the commercial printer; and

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

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

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

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

B. The certificate mentioned in this section shall relieve the person who takes such certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that such certificate is no longer acceptable. Such certificate shall be signed by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the *taxable service or tangible personal property* sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and shall be substantially in such form as the Tax Commissioner may prescribe. If an exemption pertains to a nonprofit organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under § 58.1-609.11, the exemption certificate shall be valid until the scheduled expiration date stated on the exemption certificate.

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

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

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

§ 58.1-647. Definitions.

Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title (§ 58.1-600 et seq.), unless defined otherwise, as follows:

"Cable service" means the one-way transmission to subscribers of (i) video programming as defined in 47 U.S.C. § 522 (20) 522(20) or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332 (d) 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303 (v) 303(v).

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Coin-operated communications service" means a communications service paid for by means of

inserting coins in a coin-operated telephone.

"Communications services" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, *and any other service utilizing any communications infrastructure, including international calling services, extended call area services, and Internet application-based services*, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. ~~The term "Communications services"~~ includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; ~~and~~ (vi) directory assistance; *(vii) prepaid calling services; and (viii) digital subscription services. With the exception of digital subscription services, "communications services" applies to any service described or listed in this definition, regardless of whether the customer is billed for such service on the basis of a subscription charge, a periodic charge, or a charge for actual usage, including such a fee for the use of an Internet-based application, excluding the original cost of purchasing the application.*

"Communications services provider" means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

"Cost price" means the actual cost of the purchased communications service computed in the same manner as the sales price.

"Customer" means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the private communications service.

"Digital subscription service" means a service, including audio and visual streaming services, which for a fee allows the user to access and use software, reading materials, or other digital data or applications for a defined period of time, and which products the user does not own or have permanent access to outside of such period of time.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

"Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. "Internet access service" does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

"Place of primary use" means the street address representative of where the customer's use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile communications services, the place of primary use shall be within the licensed service area of the home service provider.

"Postpaid calling service" means the communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the communications service.

"Prepaid calling service" means the right to access exclusively communications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed; ~~and that is sold in predetermined units or dollars that decrease in number with use.~~

"Private communications service" means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business.

"Sales price" means the total amount charged in money or other consideration by a communications

1289 services provider for the sale of the right or privilege of using communications services in the
 1290 Commonwealth, including any property or other services that are part of the sale. The sales price of
 1291 communications services shall not be reduced by any separately identified components of the charge that
 1292 constitute expenses of the communications services provider, including but not limited to, sales taxes on
 1293 goods or services purchased by the communications services provider, property taxes, taxes measured by
 1294 net income, and universal-service fund fees.

1295 "Service address" means, (i) the location of the telecommunications equipment to which a customer's
 1296 call is charged and from which the call originates or terminates, regardless of where the call is billed or
 1297 paid. If the location is not known in clause (i), "service address" means (ii) the origination point of the
 1298 signal of the telecommunications system or in information received by the seller from its service
 1299 provider, where the system used to transport such signals is not that of the seller. If the location is not
 1300 known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of
 1301 primary use.

1302 "*Streaming service*" means a method of transmitting or receiving video and audio data over a
 1303 computer network as a steady, continuous flow, allowing playback to proceed while subsequent data is
 1304 being received.

1305 **§ 58.1-648. Imposition of sales tax; exemptions.**

1306 A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of
 1307 every kind imposed by law, a sales or use tax on the customers of communications services in the
 1308 amount of ~~5%~~ *five percent* of the sales price of each communications service that is sourced to the
 1309 Commonwealth in accordance with § 58.1-649.

1310 B. The sales price on which the tax is levied shall not include charges for any of the following: (i)
 1311 an excise, sales, or similar tax levied by the United States or any state or local government on the
 1312 purchase, sale, use, or consumption of any communications service that is permitted or required to be
 1313 added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by
 1314 the United States or any state or local government, including but not limited to, regulatory fees and
 1315 emergency telephone surcharges, that is required to be added to the price of service if the fee or
 1316 assessment is separately stated; (iii) coin-operated communications services; (iv) ~~sale or recharge of a~~
 1317 ~~prepaid calling service;~~ (v) provision of air-to-ground radiotelephone services, as that term is defined in
 1318 47 C.F.R. § 22.99; ~~(vi)~~ (v) a communications services provider's internal use of communications
 1319 services in connection with its business of providing communications services; ~~(vii)~~ (vi) charges for
 1320 property or other services that are not part of the sale of communications services, if the charges are
 1321 stated separately from the charges for communications services; ~~(viii)~~ (vii) sales for resale; ~~(ix)~~ (viii)
 1322 charges for communications services to the Commonwealth, any political subdivision of the
 1323 Commonwealth, and the federal government and any agency or instrumentality of the federal
 1324 government; and ~~(x)~~ (ix) charges for communications services to any customers on any federal military
 1325 bases or installations when a franchise fee or similar fee for access is payable to the federal government,
 1326 or any agency or instrumentality thereof, with respect to the same communications services.

1327 C. Communications services on which the tax is hereby levied shall not include the following: (i)
 1328 information services; (ii) installation or maintenance of wiring or equipment on a customer's premises;
 1329 (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited
 1330 to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access
 1331 service, electronic mail service, electronic bulletin board service, or similar services that are incidental to
 1332 Internet access, such as voice-capable ~~e-mail~~ *email* or instant messaging; (viii) digital products delivered
 1333 electronically *that are not digital subscription services, such as including* software, downloaded music,
 1334 ~~ring tones~~ *ringtones*, and reading materials; and (ix) over-the-air radio and television service broadcast
 1335 without charge by an entity licensed for such purposes by the Federal Communications Commission.
 1336 Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4
 1337 (§ 58.1-3812 et seq.) of Chapter 38 of Title 58.1, in effect on January 1, 2006, shall continue to be
 1338 exempt from the tax imposed in accordance with the provisions of this chapter.

1339 **§ 63.2-527. Notice of earned income tax credit.**

1340 The Department shall provide notice regarding the availability of the federal earned income tax credit
 1341 authorized in § 32 of the Internal Revenue Code and the state ~~earned income tax credit~~ *income tax*
 1342 *credit for low-income taxpayers* authorized in subdivision B 2 of § 58.1-339.8 to all recipients of
 1343 Temporary Assistance for Needy Families pursuant to Chapter 6 (§ 63.2-600 et seq.), SNAP benefits
 1344 pursuant to § 63.2-801, or medical assistance pursuant to § 32.1-325 who had earned income in the prior
 1345 tax year based on information available through the Virginia Employment Commission and, according to
 1346 information made available by the Virginia Department of Taxation, either did not file federal or state
 1347 income taxes or filed taxes and did not claim the federal or state earned income tax credit. Notice shall
 1348 be distributed to recipients annually and shall include information on the qualifying income levels, the
 1349 amount of credit available, the process for applying for the credit, and the availability of assistance in
 1350 applying for the credit.