

23102407D

HOUSE BILL NO. 1605

Offered January 11, 2023

Prefiled January 6, 2023

A BILL to amend and reenact §§ 58.1-602 and 58.1-605 of the Code of Virginia, relating to local sales and use tax; construction or renovation of schools; Prince Edward County.

Patrons—Edmunds and Wright

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-602 and 58.1-605 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-602. Definitions.**

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

"Accommodations" means any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, short-term rental, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration. "Accommodations" does not include rooms or space offered by a person in the business of providing conference rooms, meeting space, or event space if the person does not also offer rooms available for overnight sleeping.

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

"Accommodations intermediary" means any person other than an accommodations provider that (i) facilitates the sale of an accommodation and (ii) either (a) charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale; (b) collects a room charge from the customer; or (c) charges a fee, other than an accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including via one or more payment processors, between a customer and an accommodations provider.

"Accommodations intermediary" does not include a person:

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

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

3. Who is licensed as a real estate licensee pursuant to Article 1 (§ 54.1-2100 et seq.) of Chapter 21 of Title 54.1, when acting within the scope of such license.

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

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

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

"Amplification, transmission, distribution, and network equipment" means production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing, and retrieving end-user subscribers' requests. A "network" includes modems, fiber optic cables, coaxial cables, radio equipment, routing equipment, switching equipment, a cable modem termination system, associated software, transmitters, power equipment, storage devices, servers, multiplexers, and antennas, which network is used to provide Internet service, regardless of whether the provider of such service is also a telephone common carrier or whether such network is also used to provide services other than Internet services.

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

"Cost price" means the actual cost of an item or article of tangible personal property computed in the

INTRODUCED

HB1605

59 same manner as the sales price as defined in this section without any deductions therefrom on account
60 of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

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

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

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

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

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

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

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

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

100 "Internet" means, collectively, the myriad of computer and telecommunications facilities, which
101 comprise the interconnected worldwide network of computer networks that employ the Transmission
102 Control Protocol/Internet Protocol, or any predecessor or successor to such protocol, to communicate
103 information of all kinds by wire or radio.

104 "Internet service" means a service that enables users to access content, information, and other
105 services offered over the Internet.

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

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

115 The determination of whether any manufacturing, mining, processing, refining or conversion activity
116 is industrial in nature shall be made without regard to plant size, existence or size of finished product
117 inventory, degree of mechanization, amount of capital investment, number of employees or other factors
118 relating principally to the size of the business. Further, "industrial in nature" includes, but is not limited
119 to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard
120 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.

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

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

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

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

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

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

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

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

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

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

The terms "retail sale" and a "sale at retail" specifically include the following: (i) the sale or charges for any accommodations furnished to transients for less than 90 continuous days; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge made for automotive refinish repair

182 materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the
183 separately stated charge for equipment available for lease or purchase by a provider of satellite television
184 programming to the customer of such programming. Equipment sold to a provider of satellite television
185 programming for subsequent lease or purchase by the customer of such programming shall be deemed a
186 sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or
187 sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible
188 personal property to such persons and may refuse to issue certificates of registration to such persons.
189 The terms "retail sale" and a "sale at retail" also specifically include the separately stated charge made
190 for supplies used during automotive repairs whether or not there is transfer of title or possession of the
191 supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies
192 by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for
193 resale.

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

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

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

207 "Room charge" means the full retail price charged to the customer for the use of the accommodations
208 before taxes. "Room charge" includes any fee charged to the customer and retained as compensation for
209 facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name.
210 The room charge shall be determined in accordance with 23VAC10-210-730 and the related rulings of
211 the Department on the same.

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

220 "Sales price" means the total amount for which tangible personal property or services are sold,
221 including any services that are a part of the sale, valued in money, whether paid in money or otherwise,
222 and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer,
223 without any deduction therefrom on account of the cost of the property sold, the cost of materials used,
224 labor or service costs, losses or any other expenses whatsoever. "Sales price" does not include (i) any
225 cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from
226 credit extended on sales of tangible personal property under conditional sale contracts or other
227 conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local
228 property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity
229 added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory
230 gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such
231 mandatory gratuity or service charge does not exceed 20 percent of the price of the meal. Where used
232 articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used
233 articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the
234 new or used articles and the credit for the used articles.

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

239 "Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii)
240 the related accessories, components, pedestals, bases, or foundations used in connection with the
241 operation of the equipment, without regard to the proximity to the equipment, the method of attachment,
242 or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other
243 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.

"Short-term rental" means the same as such term is defined in § 15.2-983.

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

"Tangible personal property" means personal property 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.

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

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

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

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

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

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

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section or § 58.1-605.1.

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

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

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

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

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of

each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

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

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

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

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

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