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SENATE BILL NO. 632

Offered January 10, 2024

Prefiled January 10, 2024

A BILL to amend and reenact §§ 33.2-1524, 58.1-320, 58.1-339.8, 58.1-439.26, 58.1-602, 58.1-603, as it is currently effective and as it may become effective, 58.1-604, as it is currently effective, 58.1-609.5, 58.1-609.11, 58.1-612, 58.1-623, 58.1-638, and 58.1-648 of the Code of Virginia, relating to taxation.

 Patron—Stuart

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-1524, 58.1-320, 58.1-339.8, 58.1-439.26, 58.1-602, 58.1-603, as it is currently effective and as it may become effective, 58.1-604, as it is currently effective, 58.1-609.5, 58.1-609.11, 58.1-612, 58.1-623, 58.1-638, and 58.1-648 of the Code of Virginia are amended and reenacted as follows:

§ 33.2-1524. Commonwealth Transportation Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Commonwealth Transportation Fund (the Fund). The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund at the end of the year shall not revert to the general fund but shall remain in the Fund. The Fund shall consist of all funds appropriated to the Fund and all funds dedicated to the Fund pursuant to law, including:

1. Revenues pursuant to §§ 58.1-2289 and 58.1-2701;

2. Revenues pursuant to subsections A and G of § 58.1-638 and § 58.1-638.3;

3. Tolls and other revenues derived from the projects financed or refinanced pursuant to this title that are payable into the state treasury and tolls and other revenues derived from other transportation projects, which may include upon the request of the applicable appointed local governing body, as soon as their obligations have been satisfied, such tolls and revenue derived for transportation projects pursuant to the Chesapeake Bay Bridge and Tunnel District and Commission established in Chapter 22 (§ 33.2-2200 et seq.) and to the Richmond Metropolitan Transportation Authority established in Chapter 29 (§ 33.2-2900 et seq.), or if the appointed local governing body requests refunding or advanced refunding by the Board and such refunding or advanced refunding is approved by the General Assembly. Such funds shall be held in separate subaccounts of the Commonwealth Transportation Fund to the extent required by law or the Board;

4. Revenues pursuant to § 58.1-2425;

5. Revenues pursuant to subdivisions A 1 through 12 of § 46.2-694 and §§ 46.2-694.1, 46.2-697, and 46.2-697.2, except where provided elsewhere in such sections and excluding revenues deposited into a special fund for the Department of Motor Vehicles pursuant to § 46.2-686;

6. Revenues pursuant to § 58.1-1741;

7. Revenues pursuant to § 58.1-815.4;

8. Revenues from § 58.1-2249;

9. Such other funds as may be appropriated by the General Assembly from time to time and designated for the Commonwealth Transportation Fund;

10. All interest, dividends, and appreciation that may accrue to the Transportation Trust Fund established pursuant to § 33.2-1524.1 and the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530;

11. All amounts required by contract to be paid over to the Commonwealth Transportation Fund;

12. Concession payments paid to the Commonwealth by a private entity pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.); and

13. Revenues pursuant to § 58.1-2531.

B. Funds in the Fund shall be distributed as follows:

1. Of the funds from subdivisions A 1, 2, 4 through 8, and 13: (i) 51 percent to the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530 and (ii) 49 percent to the Transportation Trust Fund established pursuant to § 33.2-1524.1;

2. The funds from subdivisions A 3 and 12 shall be deposited into the Transportation Trust Fund established pursuant to § 33.2-1524.1;

3. Of the funds from subdivision A 10: (i) two-thirds shall be deposited in the Virginia Transportation Infrastructure Bank established pursuant to Article 1 (§ 33.2-1500 et seq.) and (ii)

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one-third shall be deposited into the Transportation Partnership Opportunity Fund established pursuant to § 33.2-1529.1.

C. From funds available pursuant to subsection B, (i) \$40 million annually shall be deposited into the Route 58 Corridor Development Fund pursuant to § 33.2-2300; (ii) \$40 million annually shall be deposited into the Northern Virginia Transportation District Fund pursuant to § 33.2-2400; ~~and~~; (iii) \$80 million annually shall be deposited into the Special Structure Fund pursuant to § 33.2-1532, though the amount deposited shall be adjusted annually based on the change in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor; (iv) *an amount attributable to one-half the sales and use tax revenue generated after July 1, 2024, by taxable services and digital personal property pursuant to § 58.1-603 enacted by the 2024 Session of the General Assembly, as estimated by the Department of Taxation, and deposited in the Fund pursuant to subsections A and G of § 58.1-638 and § 58.1-638.3 shall be distributed to the Transportation Partnership Opportunity Fund established pursuant to § 33.2-1529.1; and (v) an amount attributable to one-half the additional sales and use tax revenue generated after July 1, 2024, by taxable services and digital personal property pursuant to § 58.1-603 enacted by the 2024 Session of the General Assembly, as estimated by the Department of Taxation, and deposited in the Fund pursuant to subsections A and G of § 58.1-638 and § 58.1-638.3 shall be distributed to the Interstate 81 Corridor Improvement Fund established pursuant to § 33.2-3601 until June 30, 2031, or such time as a total of \$400 million has been deposited to the Interstate 81 Corridor Improvement Fund.* Such deposits may be made in one or more installments.

§ 58.1-320. Imposition of tax.

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

~~Two percent on~~ *On income not exceeding \$3,000 (i) two percent for taxable years beginning before January 1, 2025, and (ii) 1.75 percent for taxable years beginning on and after January 1, 2025;*

~~Three percent on~~ *On income in excess of \$3,000, but not in excess of \$5,000, (i) three percent for taxable years beginning before January 1, 2025, and (ii) 2.65 percent for taxable years beginning on and after January 1, 2025;*

~~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~~ *On income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning January 1, 1990, (i) five percent for taxable years beginning before January 1, 2025, and (ii) 4.4 percent for taxable years beginning on and after January 1, 2025;*

~~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~~ *On income in excess of \$17,000 for taxable years beginning on and after January 1, 1990, (i) 5.75 percent for taxable years beginning before January 1, 2025, and (ii) 5.1 percent for taxable years beginning on and after January 1, 2025.*

§ 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 persons, an individual and his spouse, regardless of whether or not 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 nonrefundable 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~~ 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 1, claim a nonrefundable credit against the tax imposed pursuant to § 58.1-320 in an amount equal to ~~20 percent~~ a percentage 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 1 or 3 for the same taxable year. *The percentage shall be (i) 20 percent for taxable years beginning before January 1, 2025, and (ii) 25 percent for taxable years beginning on and after January 1, 2025.*

3. For taxable years beginning on and after January 1, 2022, but before January 1, 2026, any individual or married persons, 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 1 or 2, claim a refundable credit against the tax imposed pursuant to § 58.1-320 in an amount equal to 15 percent of the credit claimed by the individual or married persons for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year. The refundable credit shall be claimed on the Virginia income tax return and redeemed by the Tax Commissioner. In no case shall a household be allowed a credit pursuant to this subdivision and subdivision 1 or 2 for the same taxable year.

C. The amount of the credit claimed pursuant to subdivision b 1 and B 2, or in the case of a nonresident or a person to which § 58.1-303 applies, subdivision B 3, for any taxable year shall not exceed the individual's or married individuals' Virginia income tax liability.

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:

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

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

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

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

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

1. The total amount of tax credits that may be issued ~~each fiscal year~~ under this article shall not exceed (i) \$25 million *for each fiscal year before fiscal year 2025 and (ii) \$30 million for fiscal year 2025 and each fiscal year thereafter.*

182 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2
183 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25
184 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year
185 for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may
186 be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et
187 seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et
188 seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable
189 years or until the total amount of the tax credit has been taken, whichever is sooner.

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

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

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

209 **§ 58.1-602. Definitions.**

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

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

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

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

227 "Accommodations intermediary" does not include a person:

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

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

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

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

239 "Advertising" means the planning, creating, or placing of advertising in newspapers, magazines,
240 billboards, broadcasting and other media, including, without limitation, the providing of concept, writing,
241 graphic design, mechanical art, photography and production supervision. Any person providing
242 advertising as defined in this section shall be deemed to be the user or consumer of all tangible personal
243 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 same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

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

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

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

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

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing *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 that employ the Transmission

305 Control Protocol/Internet Protocol, or any predecessor or successor to such protocol, to communicate
306 information of all kinds by wire or radio.

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

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

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

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

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

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

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

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

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

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

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

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

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

364 "Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of
365 every kind and description, and all other equipment determined by the Tax Commissioner to constitute
366 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 a *taxable service* or tangible personal property ~~or services taxable under this chapter~~, and ~~shall include~~ *includes* 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~~ *that* 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 materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also specifically include the separately stated charge made for supplies used during automotive repairs whether or not there is transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for resale.

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

The terms "retail sale" and "sale at retail" 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 for the use of the accommodations before taxes. "Room charge" includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name. 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* 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

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

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

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

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

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

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

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

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

- 464 1. Software application services;
- 465 2. Computer-related services;
- 466 3. Website hosting and design;
- 467 4. Data storage; and
- 468 5. Streaming services.

469 "*Taxable service*" does not include any service transaction where the purchaser or consumer of the
470 service is a business, or any other service otherwise exempt under this chapter.

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

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

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

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

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

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

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or, distributing, *leasing, renting, or furnishing taxable services or* tangible personal property in this Commonwealth, ~~or who rents or furnishes any of the things or services taxable under this chapter,~~ or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, ~~or who leases or rents such property within this Commonwealth,~~ in the amount of ~~4.3~~ 5.2 percent:

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

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

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

4. Of the gross proceeds derived from the sale or charges for 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.~~

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

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of ~~4.3~~ 5.2 percent:

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

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

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

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

§ 58.1-609.5. Service exemptions.

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

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

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

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

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

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

3- 5. Transportation charges separately stated.

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

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

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

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

8. An amount separately charged for labor rendered in connection with diagnostic work for automotive repair and emergency roadside service for motor vehicles, as defined by § 46.2-100, regardless of whether there is a sale of a repair or replacement part or a shop supply charge.

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

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

§ 58.1-609.11. Exemptions for nonprofit entities.

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

B. Any nonprofit organization that holds a valid certificate of exemption from the Department of Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 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 30, 2003, shall remain exempt from the collection or payment of such taxes under the same terms and conditions as provided under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii) July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches, which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv) July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1, 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the applicable period of such exemptions, to 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

734 D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration
735 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* 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 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

797 similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales
798 or distributions from the mass of commingled goods shall be deemed to be sales or distributions of the
799 goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so
800 commingled has been sold or distributed.

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

806 **§ 58.1-638. Disposition of state sales and use tax revenue.**

807 A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax
808 revenue collected under the preceding sections of this chapter.

809 The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted
810 by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided
811 in this section, to the Commonwealth Transportation Fund established pursuant to § 33.2-1524. The
812 Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into
813 the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue
814 received in the preceding month. All payments shall be made to the Fund on the last day of each
815 month.

816 B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed
817 among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

818 C. The localities' share of the net revenue distributable under this section among the counties and
819 cities shall be apportioned by the Comptroller and distributed among them by warrants of the
820 Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month
821 during which the net revenue was received into the state treasury. The distribution of the localities' share
822 of such net revenue shall be computed with respect to the net revenue received into the state treasury
823 during each month, and such distribution shall be made as soon as practicable after the close of each
824 such month.

825 D. The net revenue so distributable among the counties and cities shall be apportioned and
826 distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five
827 to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such
828 population estimate produced by the Weldon Cooper Center for Public Service of the University of
829 Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are
830 dependents living on any federal military or naval reservation or other federal property within the school
831 division in which the institutions or federal military or naval reservation or other federal property is
832 located. Such population estimate produced by the Weldon Cooper Center for Public Service of the
833 University of Virginia shall account for members of the military services who are under 20 years of age
834 within the school division in which the parents or guardians of such persons legally reside. Such
835 population estimate produced by the Weldon Cooper Center for Public Service of the University of
836 Virginia shall account for individuals receiving services in state hospitals, state training centers, or
837 mental health facilities, persons who are confined in state or federal correctional institutions, or persons
838 who attend the Virginia School for the Deaf and the Blind within the school division in which the
839 parents or guardians of such persons legally reside. Such population estimate produced by the Weldon
840 Cooper Center for Public Service of the University of Virginia shall account for persons who attend
841 institutions of higher education within the school division in which the student's parents or guardians
842 legally reside. To such estimate, the Department of Education shall add the population of students with
843 disabilities, ages two through four and 20 through 21, as provided to the Department of Education by
844 school divisions. The revenue so apportionable and distributable is hereby appropriated to the several
845 counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other
846 expenses incurred in the operation of the public schools, which shall be considered as funds raised from
847 local resources. In any county, however, wherein is situated any incorporated town constituting a school
848 division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays,
849 debt and interest payments, or other expenses incurred in the operation of the public schools, the proper
850 proportionate amount received by him in the ratio that the school population of such town bears to the
851 school population of the entire county. If the school population of any city or of any town constituting a
852 school division is increased by the annexation of territory since the last estimate of school population
853 provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this
854 section, be added to the school population of such city or town as shown by the last such estimate and a
855 proper reduction made in the school population of the county or counties from which the annexed
856 territory was acquired.

857 E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a
858 two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of

hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § 29.1-101.01, is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1 an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1, and be used for the state's share of Standards of Quality basic aid payments.

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. (Contingent expiration date) Beginning July 1, 2020, of the remaining sales and use tax revenue, an amount equal to 20 percent of the revenue generated by a one-half percent sales and use tax, such as that paid to the Commonwealth Transportation Fund as provided in subsection A, shall be paid to the Commonwealth Transportation Fund established pursuant to § 33.2-1524.

The Commonwealth Transportation Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

H. (Contingent expiration date)

1. The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2509.

2. The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-2600.

3. (For contingent expiration date, see Acts 2020, c. 1235) The additional revenue generated by increases in the state sales and use tax from Planning District 15 pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-3701.

4. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, and 58.1-614 shall be deposited into special funds that shall be established by appropriate legislation.

5. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

I. (For contingent expiration date, see Acts 2018, c. 850) The additional revenue generated by increases in the state sales and use tax from the Historic Triangle pursuant to § 58.1-603.2 shall be deposited by the Comptroller as follows: (i) 50 percent shall be deposited into the Historic Triangle Marketing Fund established pursuant to subsection F of § 58.1-603.2; and (ii) 50 percent shall be

deposited in the special fund created pursuant to subdivision D 2 of § 58.1-603.2 and distributed to the localities in which the revenues were collected. The net revenues distributable under this subsection shall be computed as an estimate of the net revenues to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

J. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

K. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Commonwealth Transportation Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

L. The provisions of this section requiring the payment or distribution of sales and use tax revenue to funds other than the general fund shall not apply to the sales and use tax revenue generated by the 0.9 percent sales and use tax increase enacted by the 2024 Session of the General Assembly. Notwithstanding the foregoing, the amount of sales and use tax revenue attributable to the revenue generated by taxable services and digital personal property pursuant to § 58.1-603 enacted by the 2024 Session of the General Assembly, as estimated by the Department of Taxation, shall be distributed to the Commonwealth Transportation Fund established pursuant to § 33.2-1524 and disbursed as provided therein.

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

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

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

C. Communications services on which the tax is hereby levied shall not include the following: (i) information services; (ii) installation or maintenance of wiring or equipment on a customer's premises; (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) ~~digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials~~ *digital personal property and taxable services, as those terms are defined by §58.1-602*; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission. Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 ~~of Title 58.1~~, in effect on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions of this chapter.

2. That the provisions of the first enactment of this act amending §§ 33.2-1524, 58.1-602, 58.1-603, as it is currently effective and as it may become effective, 58.1-604, as it is currently effective, 58.1-609.5, 58.1-609.11, 58.1-612, 58.1-623, and 58.1-638 of the Code of Virginia shall become effective on January 1, 2025.

3. That Department of Taxation shall develop guidelines implementing the provisions of the first enactment of this act amending §§ 33.2-1524, 58.1-602, 58.1-603, as it is currently effective and as it may become effective, 58.1-609.5, 58.1-609.11, 58.1-612, and 58.1-623 of the Code of Virginia. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).