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**SENATE BILL NO. 703**

Offered January 19, 2024

A *BILL to amend and reenact §§ 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, 58.1-623, and 58.1-648 of the Code of Virginia, relating to general appropriations and revenue.*

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 Referred to Committee on Finance and Appropriations
 

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 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, 58.1-623, and 58.1-648 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

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59 the object of gain, benefit or advantage, either directly or indirectly.

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

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

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

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

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

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

87 "Gross sales" means the sum total of all retail sales of tangible personal property or *streaming*  
88 services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross  
89 sales" does not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in  
90 § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the  
91 selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any  
92 county or city under § 58.1-605 or 58.1-606.

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

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

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

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

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

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

116 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting  
117 with the handling and storage of raw materials at the plant site and continuing through the last step of  
118 production where the product is finished or completed for sale and conveyed to a warehouse at the  
119 production site, and also includes equipment and supplies used for production line testing and quality  
120 control. "Manufacturing" also includes the necessary ancillary activities of newspaper and magazine

printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

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

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

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

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

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow,

temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

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

"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.

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

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

"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.

#### **§ 58.1-603. (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 streaming 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 percent:

1. Of the gross sales price of each *streaming 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 streaming 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 *streaming 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~~ *that* are expressly stated as taxable within this chapter.

**§ 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 that~~ 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 *streaming 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 *streaming 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

428 records are not available through no fault of the entity. If the records are not available through no fault  
429 of the entity, then the entity must provide such information to the Department the following year. No  
430 information provided pursuant to this subsection (except the failure to provide available information)  
431 shall be a basis for the Department of Taxation to refuse to exempt an entity.

432 F. Any entity that is determined under subsections C, D, and E by the Department of Taxation to be  
433 exempt from paying sales and use tax shall also be exempt from collecting sales and use tax, at its  
434 election, if (i) the entity is within the same class of organization of any entity that was exempt from  
435 collecting sales and use tax on June 30, 2003, or (ii) the entity is organized exclusively to foster,  
436 sponsor, and promote physical education, athletic programs, and contests for youths in the  
437 Commonwealth.

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

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

447 **§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

489 6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular,



seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

A. All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, or distribution, of *streaming 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 *streaming 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 *streaming service* or tangible personal property other than an exempt use or retention, demonstration, or display while holding the property for resale, distribution, or lease in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of the time the property or service is first used by him, and the cost of the property or service to him shall be deemed the sales price of such retail sale. If the sole use of the property or service other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, distribution, or lease, the taxpayer may elect to pay the tax on the amount of the rental charged, rather than the cost of the property or service to him.

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

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

**§ 58.1-648. 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%~~ *five percent* 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 *streaming services as defined by § 58.1-602* or 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; ~~and (viii) digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials~~ *digital personal property as 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

613 accordance with the provisions of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of Title 58.1, in effect  
614 on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions  
615 of this chapter.

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