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HOUSE BILL NO. 1281

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—Fowler

Referred to Committee on Finance

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) 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

59 into the Northern Virginia Transportation District Fund pursuant to § 33.2-2400; ~~and~~; (iii) \$80 million
60 annually shall be deposited into the Special Structure Fund pursuant to § 33.2-1532, though the amount
61 deposited shall be adjusted annually based on the change in the United States Average Consumer Price Index
62 for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S.
63 Department of Labor; (iv) an amount attributable to one-half the sales and use tax revenue generated after
64 July 1, 2024, by taxable services and digital personal property pursuant to § 58.1-603 enacted by the 2024
65 Session of the General Assembly, as estimated by the Department of Taxation, and deposited in the Fund
66 pursuant to subsections A and G of § 58.1-638 and § 58.1-638.3 shall be distributed to the Transportation
67 Partnership Opportunity Fund established pursuant to § 33.2-1529.1; and (v) an amount attributable to one-
68 half the additional sales and use tax revenue generated after July 1, 2024, by taxable services and digital
69 personal property pursuant to § 58.1-603 enacted by the 2024 Session of the General Assembly, as estimated
70 by the Department of Taxation, and deposited in the Fund pursuant to subsections A and G of § 58.1-638 and
71 § 58.1-638.3 shall be distributed to the Interstate 81 Corridor Improvement Fund established pursuant to §
72 33.2-3601 until June 30, 2031, or such time as a total of \$400 million has been deposited to the Interstate 81
73 Corridor Improvement Fund. Such deposits may be made in one or more installments.

74 **§ 58.1-320. Imposition of tax.**

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

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

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

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

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

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

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

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

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

95 ~~Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January 1,~~
96 ~~1987, through December 31, 1987;~~

97 ~~Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January 1,~~
98 ~~1988, through December 31, 1988;~~

99 ~~Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January 1,~~
100 ~~1989, through December 31, 1989; and~~

101 ~~Five and three-quarters percent on~~ On income in excess of \$17,000 for taxable years beginning on and
102 after January 1, 1990, (i) 5.75 percent for taxable years beginning before January 1, 2025, and (ii) 5.1
103 percent for taxable years beginning on and after January 1, 2025.

104 **§ 58.1-339.8. Income tax credit for low-income taxpayers.**

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

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

109 "Household" means an individual, or in the case of married persons, an individual and his spouse,
110 regardless of whether or not the individual and his spouse file combined or separate Virginia individual
111 income tax returns.

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

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

116 B. 1. For taxable years beginning on and after January 1, 2000, any individual or persons filing a joint
117 return whose family Virginia adjusted gross income does not exceed 100 percent of the poverty guideline
118 amount corresponding to a household of an equal number of persons as listed in the poverty guidelines
119 published during such taxable year, shall be allowed a nonrefundable credit against the tax levied pursuant to

120 § 58.1-320 in an amount equal to \$300 each for the individual, the individual's spouse, and any person
 121 claimed as a dependent on the individual's or married individuals' income tax return for the taxable year. For
 122 any taxable year in which married individuals file separate Virginia income tax returns, the credit provided
 123 under this section shall be allowed against the tax for only one of such two tax returns. Additionally, the
 124 credit provided under this section shall not be allowed against such tax of a dependent of the individual or of
 125 married individuals.

126 2. ~~For taxable years beginning on and after January 1, 2006, any~~ Any individual or married individuals,
 127 eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu of the
 128 credit authorized under subdivision 1, claim a nonrefundable credit against the tax imposed pursuant to §
 129 58.1-320 in an amount equal to ~~20 percent~~ a percentage of the credit claimed by the individual or married
 130 individuals for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable
 131 year. In no case shall a household be allowed a credit pursuant to this subdivision and subdivision 1 or 3 for
 132 the same taxable year. *The percentage shall be (i) 20 percent for taxable years beginning before January 1,*
 133 *2025, and (ii) 25 percent for taxable years beginning on and after January 1, 2025.*

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

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

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

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

155 **§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.**

156 A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1,
 157 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under Article
 158 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-
 159 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
 160 the monetary or marketable securities donation made by the person to a scholarship foundation included on
 161 the list published annually by the Department of Education in accordance with the provisions of § 58.1-
 162 439.28.

163 No tax credit shall be allowed under this article if the value of the monetary or marketable securities
 164 donation made by an individual is less than \$500. In addition, tax credits shall be issued only for the first
 165 \$125,000 in value of donations made by the individual during the taxable year. The maximum aggregate
 166 donations of \$125,000 for the taxable year for which tax credits may be issued and the minimum required
 167 donation of \$500 shall apply on an individual basis. Such limitation on the maximum amount of tax credits
 168 issued to an individual shall not apply to credits issued to any business entity, including a sole proprietorship.

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

172 1. The total amount of tax credits that may be issued ~~each fiscal year~~ under this article shall not exceed (i)
 173 \$25 million *for each fiscal year before fiscal year 2025 and (ii) \$30 million for fiscal year 2025 and each*
 174 *fiscal year thereafter.*

175 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ 58.1-320 et
 176 seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or
 177 Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year for which the credit is
 178 claimed. Any credit not usable for the taxable year for which first allowed may be carried over for credit
 179 against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400
 180 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.)

181 of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax
182 credit has been taken, whichever is sooner.

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

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

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

202 **§ 58.1-602. Definitions.**

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

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

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

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

220 "Accommodations intermediary" does not include a person:

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

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

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

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

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

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

238 "Amplification, transmission, distribution, and network equipment" means production, distribution, and
239 other equipment used to provide Internet-access services, such as computer and communications equipment
240 and software used for storing, processing, and retrieving end-user subscribers' requests. A "network" includes
241 modems, fiber optic cables, coaxial cables, radio equipment, routing equipment, switching equipment, a cable

242 modem termination system, associated software, transmitters, power equipment, storage devices, servers,
 243 multiplexers, and antennas, which network is used to provide Internet service, regardless of whether the
 244 provider of such service is also a telephone common carrier or whether such network is also used to provide
 245 services other than Internet services.

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

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

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

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

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

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

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

274 "Gross sales" means the sum total of all retail sales of tangible personal property or *taxable* services as
 275 defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" does not
 276 include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal
 277 Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the
 278 Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or
 279 58.1-606.

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

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

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

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

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

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

302 "Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with

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

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

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

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

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

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

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

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

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

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

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

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

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

361 "Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the
362 form of a *taxable service* or tangible personal property or ~~services taxable under this chapter~~, and ~~shall~~
363 ~~include~~ includes any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a

364 sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any
 365 dealer making a sale for resale ~~which~~ *that* is not in strict compliance with such regulations shall be personally
 366 liable for payment of the tax.

367 The terms "retail sale" and a "sale at retail" specifically include the following: (i) the sale or charges for
 368 any accommodations furnished to transients for less than 90 continuous days; (ii) sales of tangible personal
 369 property to persons for resale when because of the operation of the business, or its very nature, or the lack of
 370 a place of business in which to display a certificate of registration, or the lack of a place of business in which
 371 to keep records, or the lack of adequate records, or because such persons are minors or transients, or because
 372 such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the
 373 Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the
 374 separately stated charge made for automotive refinish repair materials that are permanently applied to or
 375 affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for
 376 lease or purchase by a provider of satellite television programming to the customer of such programming.
 377 Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the
 378 customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to
 379 promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this
 380 chapter on the cost price of such tangible personal property to such persons and may refuse to issue
 381 certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also specifically
 382 include the separately stated charge made for supplies used during automotive repairs whether or not there is
 383 transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile.
 384 The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall
 385 be deemed a sale for resale.

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

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

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

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

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

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

425 the net difference between the sales price of the new or used articles and the credit for the used articles.

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

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

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

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

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

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

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

- 451 1. Software application services;
- 452 2. Computer-related services;
- 453 3. Website hosting and design;
- 454 4. Data storage; and
- 455 5. Streaming services.

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

458 "Use" means the exercise of any right or power over tangible personal property incident to the ownership
459 thereof, except that it does not include the sale at retail of that property in the regular course of business.
460 "Use" does not include the exercise of any right or power, including use, distribution, or storage, over any
461 tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a
462 nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or
463 telephone. "Use" does not include any sale determined to be a gift transaction, subject to tax under § 58.1-
464 604.6.

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

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

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

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

476 **§ 58.1-603. (Contingent expiration date) Imposition of sales tax.**

477 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by
478 law, a license or privilege tax upon every person who engages in the business of selling at retail ~~or~~,
479 distributing, *leasing, renting, or furnishing taxable services or* tangible personal property in this
480 Commonwealth, ~~or who rents or furnishes any of the things or services taxable under this chapter,~~ or who
481 stores for use or consumption in this Commonwealth any item or article of tangible personal property as
482 defined in this chapter, ~~or who leases or rents such property within this Commonwealth,~~ in the amount of 4.3
483 5.2 percent:

- 484 1. Of the gross sales price of each *taxable service or* item or article of tangible personal property when
485 sold at retail ~~or~~, distributed, *or furnished* in this Commonwealth.
- 486 2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or

487 rental of such property is an established business, or part of an established business, or the same is incidental
488 or germane to such business.

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

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

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

494 **§ 58.1-603. (Contingent effective date) Imposition of sales tax.**

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

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

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

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

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

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

513 **§ 58.1-604. (Contingent expiration date) Imposition of use tax.**

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

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

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

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

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

535 **§ 58.1-609.5. Service exemptions.**

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

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

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

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

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

548 *performance of such services.*

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

550 ~~3. 5. Transportation charges separately stated.~~

551 ~~4. 6. Separately stated charges for alterations to apparel, clothing, and garments.~~

552 ~~5. 7. Charges for gift wrapping services performed by a nonprofit organization.~~

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

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

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

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

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

568 **§ 58.1-609.11. Exemptions for nonprofit entities.**

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

572 B. Any nonprofit organization that holds a valid certificate of exemption from the Department of
 573 Taxation, or any nonprofit church that holds a valid self-executing certificate of exemption, that exempts it
 574 from collecting or paying state and local retail sales or use taxes as of June 30, 2003, pursuant to § 58.1-609.4
 575 , 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
 576 remain exempt from the collection or payment of such taxes under the same terms and conditions as provided
 577 under such sections as such sections existed on June 30, 2003, until: (i) July 1, 2007, for such entities that
 578 were exempt under § 58.1-609.4; (ii) July 1, 2008, for such entities that were exempt under § 58.1-609.7; (iii)
 579 July 1, 2004, for the first one-half of such entities that were exempt under § 58.1-609.8, except churches,
 580 which will remain exempt under the same criteria and procedures in effect for churches on June 30, 2003; (iv)
 581 July 1, 2005, for the second one-half of such entities that were exempt under § 58.1-609.8; and (v) July 1,
 582 2006, for such entities that were exempt under § 58.1-609.9 or under § 58.1-609.10. At the end of the
 583 applicable period of such exemptions, to maintain or renew an exemption for the period of time set forth in
 584 subsection G, each entity must follow the procedures set forth in subsection C and meet the criteria set forth
 585 in subsection D. Provided, however, that any entity that was exempt from collecting sales and use tax shall
 586 continue to be exempt from such collection, and any entity that was exempt from paying sales and use tax for
 587 the purchase of services, as of June 30, 2003, shall continue to be exempt from such payment, provided that it
 588 follows the other procedures set forth in subsection C and meets the criteria set forth in subsection D.
 589 Provided further, however, that an educational institution doing business in the Commonwealth which
 590 provides a face-to-face educational experience in American government and was exempt pursuant to
 591 subdivision 4 of § 58.1-609.4 from paying sales and use tax for the purchase of services, as of June 30, 2003,
 592 shall continue to be exempt from such payment, provided that it follows the other procedures set forth in
 593 subsection C and meets the criteria set forth in subsection D.

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

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

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

608 1. a. The entity is exempt from federal income taxation (i) under § 501(c)(3) of the Internal Revenue

609 Code; (ii) under § 501(c)(4) of the Internal Revenue Code and is organized for a charitable purpose; or (iii)
610 under § 501(c)(19) of the Internal Revenue Code; or

611 b. The entity has annual gross receipts of less than \$5,000, and the entity is organized for at least one of
612 the purposes set forth in § 501(c)(3) of the Internal Revenue Code, one of the charitable purposes set forth in
613 § 501(c)(4) of the Internal Revenue Code, or one of the purposes set forth in § 501(c)(19) of the Internal
614 Revenue Code; and

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

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

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

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

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

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

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

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

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

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

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

654 **§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.**

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

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

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

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

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

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

670 *services or tangible personal property;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

715 D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration under
716 § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled person
717 maintains a distribution center, warehouse, fulfillment center, office, or similar location within the
718 Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its customers.
719 The presumption in this subsection may be rebutted by demonstrating that the activities conducted by the
720 commonly controlled person in the Commonwealth are not significantly associated with the dealer's ability to
721 establish or maintain a market in the Commonwealth for the dealer's sales. For purposes of this subsection, a
722 "commonly controlled person" means any person that is a member of the same "controlled group of
723 corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered, as
724 the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership
725 relationship to the dealer as a corporation that is a member of the same "controlled group of corporations," as
726 defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered.

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

731 1. The ownership or leasing by that person of tangible or intangible property located at the Virginia

732 premises of the commercial printer which is used solely in connection with the printing contract with the
733 person;

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

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

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

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

750 **§ 58.1-623. Sales or leases presumed subject to tax; exemption certificates.**

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

756 B. The certificate mentioned in this section shall relieve the person who takes such certificate from any
757 liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that such
758 certificate is no longer acceptable. Such certificate shall be signed by and bear the name and address of the
759 taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall
760 indicate the general character of the taxable service or tangible personal property sold, distributed, leased, or
761 stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and shall be
762 substantially in such form as the Tax Commissioner may prescribe. If an exemption pertains to a nonprofit
763 organization, other than a nonprofit church, that has qualified for a sales and use tax exemption under § 58.1-
764 609.11, the exemption certificate shall be valid until the scheduled expiration date stated on the exemption
765 certificate.

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

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

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

784 **§ 58.1-638. Disposition of state sales and use tax revenue.**

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

787 The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the
788 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this
789 section, to the Commonwealth Transportation Fund established pursuant to § 33.2-1524. The Fund's share of
790 such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury
791 each month, and such estimated payment shall be adjusted for the actual net revenue received in the
792 preceding month. All payments shall be made to the Fund on the last day of each month.

793 B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among

794 the counties and cities of the Commonwealth in the manner provided in subsections C and D.

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

801 D. The net revenue so distributable among the counties and cities shall be apportioned and distributed
802 upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided
803 by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate
804 produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for
805 persons who are domiciled in orphanages or charitable institutions or who are dependents living on any
806 federal military or naval reservation or other federal property within the school division in which the
807 institutions or federal military or naval reservation or other federal property is located. Such population
808 estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall
809 account for members of the military services who are under 20 years of age within the school division in
810 which the parents or guardians of such persons legally reside. Such population estimate produced by the
811 Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving
812 services in state hospitals, state training centers, or mental health facilities, persons who are confined in state
813 or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind
814 within the school division in which the parents or guardians of such persons legally reside. Such population
815 estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall
816 account for persons who attend institutions of higher education within the school division in which the
817 student's parents or guardians legally reside. To such estimate, the Department of Education shall add the
818 population of students with disabilities, ages two through four and 20 through 21, as provided to the
819 Department of Education by school divisions. The revenue so apportionable and distributable is hereby
820 appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest
821 payments, or other expenses incurred in the operation of the public schools, which shall be considered as
822 funds raised from local resources. In any county, however, wherein is situated any incorporated town
823 constituting a school division, the county treasurer shall pay into the town treasury for maintenance,
824 operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the
825 public schools, the proper proportionate amount received by him in the ratio that the school population of
826 such town bears to the school population of the entire county. If the school population of any city or of any
827 town constituting a school division is increased by the annexation of territory since the last estimate of school
828 population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of
829 this section, be added to the school population of such city or town as shown by the last such estimate and a
830 proper reduction made in the school population of the county or counties from which the annexed territory
831 was acquired.

832 E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two
833 percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting
834 equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching
835 equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S.
836 Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the
837 Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the
838 Game Protection Fund established under § 29.1-101 and shall be used, in part, to defray the cost of law
839 enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game
840 Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the
841 balance in the Capital Improvement Fund, established under § 29.1-101.01, is equal to or in excess of \$35
842 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection
843 Fund, established under § 29.1-101, in excess of the net operating expenses of the Board, after deduction of
844 other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the
845 general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

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

854 2. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue

855 generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of
856 Quality/Local Real Estate Property Tax Relief Fund established under § 58.1-638.1, and be used for the
857 state's share of Standards of Quality basic aid payments.

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

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

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

871 H. (Contingent expiration date)

872 1. The additional revenue generated by increases in the state sales and use tax from Planning District 8
873 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
874 fund established under § 33.2-2509.

875 2. The additional revenue generated by increases in the state sales and use tax from Planning District 23
876 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
877 fund established under § 33.2-2600.

878 3. (For contingent expiration date, see Acts 2020, c. 1235) The additional revenue generated by increases
879 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,
880 and 58.1-614 shall be deposited by the Comptroller in the fund established under § 33.2-3701.

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

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

888 I. (For contingent expiration date, see Acts 2018, c. 850) The additional revenue generated by increases in
889 the state sales and use tax from the Historic Triangle pursuant to § 58.1-603.2 shall be deposited by the
890 Comptroller as follows: (i) 50 percent shall be deposited into the Historic Triangle Marketing Fund
891 established pursuant to subsection F of § 58.1-603.2; and (ii) 50 percent shall be deposited in the special fund
892 created pursuant to subdivision D 2 of § 58.1-603.2 and distributed to the localities in which the revenues
893 were collected. The net revenues distributable under this subsection shall be computed as an estimate of the
894 net revenues to be received by the state treasury each month, and such estimated payment shall be adjusted
895 for the actual net revenue received in the preceding month. All payments shall be made to the appropriate
896 funds on the last day of each month.

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

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

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

909 **§ 58.1-648. Imposition of sales tax; exemptions.**

910 A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every
911 kind imposed by law, a sales or use tax on the customers of communications services in the amount of 5% of
912 the sales price of each communications service that is sourced to the Commonwealth in accordance with §
913 58.1-649.

914 B. The sales price on which the tax is levied shall not include charges for any of the following: (i) an
915 excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale,

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

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

942 **2. That the provisions of the first enactment of this act amending §§ 33.2-1524, 58.1-602, 58.1-603, as it**
943 **is currently effective and as it may become effective, 58.1-604, as it is currently effective, 58.1-609.5,**
944 **58.1-609.11, 58.1-612, 58.1-623, and 58.1-638 of the Code of Virginia shall become effective on January**
945 **1, 2025.**

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