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HOUSE BILL NO. 1560
Offered January 13, 2025
Prefiled December 14, 2024

A *BILL to amend and reenact § 58.1-602 of the Code of Virginia, relating to sales and use tax; accommodations for transients.*

Patron—McNamara

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-602 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-602. Definitions.

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

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

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

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

"Accommodations intermediary" does not include a person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 "Modular building" means, but is not limited to, single and multifamily houses, apartment units,

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

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

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

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

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

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

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

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

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

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

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

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

169 The terms "retail sale" and a "sale at retail" specifically include the following: (i) the sale or charges for
 170 any accommodations furnished to transients for less than ~~90~~ 30 continuous days; (ii) sales of tangible
 171 personal property to persons for resale when because of the operation of the business, or its very nature, or
 172 the lack of a place of business in which to display a certificate of registration, or the lack of a place of
 173 business in which to keep records, or the lack of adequate records, or because such persons are minors or
 174 transients, or because such persons are engaged in essentially service businesses, or for any other reason there
 175 is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business
 176 operations; (iii) the separately stated charge made for automotive refinish repair materials that are
 177 permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for
 178 equipment available for lease or purchase by a provider of satellite television programming to the customer of
 179 such programming. Equipment sold to a provider of satellite television programming for subsequent lease or
 180 purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is

181 authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed
182 by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue
183 certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also specifically
184 include the separately stated charge made for supplies used during automotive repairs whether or not there is
185 transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile.
186 The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall
187 be deemed a sale for resale.

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

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

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

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

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

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

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

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

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

242 "Storage" means any keeping or retention of tangible personal property for use, consumption or

243 distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of
244 business.

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

250 "Use" means the exercise of any right or power over tangible personal property incident to the ownership
251 thereof, except that it does not include the sale at retail of that property in the regular course of business.

252 "Use" does not include the exercise of any right or power, including use, distribution, or storage, over any
253 tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a
254 nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or
255 telephone. "Use" does not include any sale determined to be a gift transaction, subject to tax under §
256 58.1-604.6.

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

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

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

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