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HOUSE BILL NO. 1866

Offered January 13, 2025

Prefiled January 6, 2025

A *BILL to amend and reenact §§ 58.1-416, as it is currently effective and as it may become effective, 58.1-419, 58.1-422.4, and 58.1-422.5 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 58.1-416.1; and to repeal the third enactments of Chapters 256 and 257 of the Acts of Assembly of 2022, relating to sourcing of certain sales.*

Patron—McNamara

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-416, as it is currently effective and as it may become effective, 58.1-419, 58.1-422.4, and 58.1-422.5 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-416.1 as follows:

§ 58.1-416. (Contingent expiration date) When certain other sales deemed in the Commonwealth.

A. *Sales For taxable years beginning before January 1, 2026, and except as provided in subsection B, sales, other than sales of tangible personal property, are in the Commonwealth if:*

- 1. The income-producing activity is performed in the Commonwealth; or
- 2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.

B. 1. For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a debt buyer's business.

2. For property information and analytics firms, as defined in § 58.1-422.4, that meet the requirements set forth in § 58.1-422.4, sales of services are in the Commonwealth if they are derived from transactions with a customer or client who receives the benefit of the services in the Commonwealth. Such rule shall apply regardless of the location of a property information and analytics firm's business operations.

C. The taxes under this article on the sales described under subsection B are imposed to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. For the collection of such taxes on such sales, it is the intent of the General Assembly that the Tax Commissioner and the Department assert the taxpayer's nexus with the Commonwealth to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law.

D. If necessary information is not available to the taxpayer to determine whether a sale other than a sale of tangible personal property is in the Commonwealth pursuant to the provisions of subsections B and C, the taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided that the taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has been undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion of such sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not have as a principal purpose the avoidance of any tax due under this article. The Department may implement procedures for obtaining its approval to use an estimate. The Department shall adopt remedies and corrective procedures for cases in which the Department has determined that the sourcing rules for sales other than sales of tangible personal property have been abused by the taxpayer, which may include reliance on the location of income-producing activity and direct costs of performance as described in subsection A.

§ 58.1-416. (Contingent effective date) When certain other sales deemed in the Commonwealth.

A. *Sales For taxable years beginning before January 1, 2026, and except as provided in subsection B, sales, other than sales of tangible personal property, are in the Commonwealth if:*

- 1. The income-producing activity is performed in the Commonwealth; or
- 2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.

B. 1. For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a debt buyer's business.

2. For property information and analytics firms, as defined in § 58.1-422.4, that meet the requirements set

59 forth in § 58.1-422.4, sales of services are in the Commonwealth if they are derived from transactions with a
60 customer or client who receives the benefit of the services in the Commonwealth. Such rule shall apply
61 regardless of the location of a property information and analytics firm's business operations.

62 3. For Internet root infrastructure providers, as defined in § 58.1-422.5, sales of services are in the
63 Commonwealth if they are derived from sales transactions with a customer or client who receives the benefit
64 of the services in the Commonwealth. Such rule shall apply regardless of the location of an Internet root
65 infrastructure provider's operations.

66 C. The taxes under this article on the sales described under subsection B are imposed to the maximum
67 extent permitted under the Constitutions of Virginia and the United States and federal law. For the collection
68 of such taxes on such sales, it is the intent of the General Assembly that the Tax Commissioner and the
69 Department assert the taxpayer's nexus with the Commonwealth to the maximum extent permitted under the
70 Constitutions of Virginia and the United States and federal law.

71 D. If necessary information is not available to the taxpayer to determine whether a sale other than a sale of
72 tangible personal property is in the Commonwealth pursuant to the provisions of subsections B and C, the
73 taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided that the
74 taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has been
75 undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion of such
76 sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not have as a principal purpose the
77 avoidance of any tax due under this article. The Department may implement procedures for obtaining its
78 approval to use an estimate. The Department shall adopt remedies and corrective procedures for cases in
79 which the Department has determined that the sourcing rules for sales other than sales of tangible personal
80 property have been abused by the taxpayer, which may include reliance on the location of income-producing
81 activity and direct costs of performance as described in subsection A.

82 **§ 58.1-416.1. Market-based sourcing for sales other than sales of tangible personal property.**

83 A. For taxable years beginning on and after January 1, 2026, except as provided in subsection B, sales,
84 other than sales of tangible personal property, are in the Commonwealth if the taxpayer's market for the
85 sales is in the Commonwealth. The taxpayer's market for sales is in the Commonwealth:

86 1. In the case of sale, rental, lease, or license of real property, if and to the extent that the property is
87 located in the Commonwealth;

88 2. In the case of sale of a service, if and to the extent that the benefit of the service is received at a
89 location in the Commonwealth; and

90 3. a. In the case of intangible property that is rented, leased, or licensed, if and to the extent that the
91 property is used in the Commonwealth. For purposes of this subdivision a, intangible property utilized in
92 marketing a good or service to a consumer is "used in the Commonwealth" if that good or service is
93 purchased by a consumer who is in the Commonwealth; and

94 b. In the case of intangible property that is sold, if and to the extent that the property is used in the
95 Commonwealth. For purposes of this subdivision b, (i) a contract right, government license, or similar
96 intangible property that authorizes the holder to conduct a business activity in a specific geographic area is
97 "used in the Commonwealth" if the geographic area includes all or part of the Commonwealth; (ii) receipts
98 from intangible property sales that are contingent on the productivity, use, or disposition of the intangible
99 property are treated as receipts from the rental, lease or licensing of such intangible property under
100 subdivision a; and (iii) all other receipts from a sale of intangible property are excluded from the numerator
101 and denominator of the sales factor.

102 B. 1. For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are
103 in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person
104 who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth.
105 Such rule shall apply regardless of the location of a debt buyer's business.

106 2. For property information and analytics firms, as defined in § 58.1-422.4, that meet the requirements set
107 forth in § 58.1-422.4, sales of services are in the Commonwealth if they are derived from transactions with a
108 customer or client who receives the benefit of the services in the Commonwealth. Such rule shall apply
109 regardless of the location of a property information and analytics firm's business operations.

110 3. For Internet root infrastructure providers, as defined in § 58.1-422.5, sales of services are in the
111 Commonwealth if they are derived from sales transactions with a customer or client who receives the benefit
112 of the services in the Commonwealth. Such rule shall apply regardless of the location of an Internet root
113 infrastructure provider's operations.

114 C. The taxes under this article on the sales described in subsections A and B shall be imposed to the
115 maximum extent permitted under the Constitutions of Virginia and the United States and federal law. For the
116 collection of such taxes on such sales, it is the intent of the General Assembly that the Tax Commissioner and
117 the Department assert the taxpayer's nexus with the Commonwealth to the maximum extent permitted under
118 the Constitutions of Virginia and the United States and federal law.

119 D. If necessary information is not available to the taxpayer to determine whether a sale other than a sale

120 of tangible personal property is in the Commonwealth pursuant to the provisions of subsections A, B, and C,
 121 the taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided that the
 122 taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has been
 123 undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion of
 124 such sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not have as a principal
 125 purpose the avoidance of any tax due under this article. The Department may implement procedures for
 126 obtaining its approval to use an estimate. The Department shall adopt remedies and corrective procedures
 127 for cases in which the Department has determined that the sourcing rules for sales other than sales of
 128 tangible personal property have been abused by the taxpayer, which may include reliance on the location of
 129 income-producing activity and direct costs of performance as described in subsection A of § 58.1-416, as it
 130 was in effect for taxable years beginning before January 1, 2026.

131 **§ 58.1-419. Construction corporations; apportionment.**

132 A. Construction companies which have elected to report income on the completed contract basis shall
 133 apportion income within and without this Commonwealth in the ratio that the business within the
 134 Commonwealth is to the total business of the corporation.

135 B. All other construction corporations not reporting under the completed contract method shall determine
 136 Virginia taxable income by reference to §§ 58.1-406 through ~~58.1-416~~ 58.1-416.1.

137 C. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its business within any
 138 qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the
 139 numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable
 140 year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any
 141 year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable
 142 initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

143 **§ 58.1-422.4. Property information and analytics firms.**

144 A. As used in this section:

145 "Authority" means the Virginia Economic Development Partnership Authority.

146 "Eligible city" means the City of Richmond.

147 "Memorandum of understanding" means a performance agreement or related document entered into by a
 148 property information and analytics firm and the Authority on or after December 1, 2021, but before August 1,
 149 2022, that sets forth the requirements for capital investments and the creation of new full-time jobs by such
 150 property information and analytics firm.

151 "Property information and analytics firm" means an entity and its affiliated entities that as of January 1,
 152 2022, is primarily a commercial real estate information and analytics firm with a location in an eligible city
 153 and that between January 1, 2022, and January 1, 2029, is expected to (i) make or cause to be made a capital
 154 investment in an eligible city of at least \$414.45 million and (ii) create at least 1,785 new jobs with average
 155 annual wages of at least \$85,000 per job.

156 B. 1. For taxable years beginning on or after January 1, 2022, but before January 1, 2029, a property
 157 information and analytics firm shall be subject to the provisions of subdivision B 2 of § 58.1-416 *or*
 158 *subdivision B 2 of § 58.1-416.1, as applicable*, only if the Authority certifies to the Department that it has at
 159 least 1,000 full-time employees as of January 1, 2022, in an eligible city, subject to the terms and conditions
 160 of the memorandum of understanding.

161 2. For taxable years beginning on or after January 1, 2029, a property information and analytics firm shall
 162 be subject to the provisions of subdivision B 2 of § ~~58.1-416~~ 58.1-416.1 only if the Authority certifies to the
 163 Department that it has at least 2,785 full-time employees as of January 1, 2029, in an eligible city, and from
 164 January 1, 2022, through December 31, 2028, has made or caused to be made a capital investment for its
 165 facilities in that eligible city of at least \$414.45 million. Once the Authority certifies a property information
 166 and analytics firm has met the job and capital investment requirements set forth in this subdivision, no
 167 additional certifications shall be required and the property information and analytics firm shall continue to be
 168 subject to the provisions of subdivision B 2 of § ~~58.1-416~~ 58.1-416.1 in all future taxable years.

169 C. The General Assembly finds that the growth of property information and analytics firms, including the
 170 capital investment and new jobs spurred by such growth, is essential to the continued fiscal health of the
 171 Commonwealth. Accordingly, the provisions of subsections A and B relating to capital investment and new
 172 jobs are integral to the purpose of this section. If any provision of this section is for any reason held to be
 173 invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be
 174 deemed severable.

175 **§ 58.1-422.5. (Contingent effective date) Internet root infrastructure providers.**

176 A. As used in this section:

177 "Authority" means the Virginia Economic Development Partnership Authority.

178 "Eligible planning district" means Planning District 8.

179 "Internet root infrastructure provider" means an entity and its affiliated entities that is designated to
 180 operate one or more of the 13 Internet root servers of the Internet Assigned Names Authority (IANA) root

181 and functions as the authoritative directory for one or more Top-Level Domains. This term does not include
182 an Internet service provider, cable service provider, or similar company.

183 "Internet root server of the IANA root" means a Domain Name System server for one of the 13 root
184 identities (A. - M.) that answers requests for the Domain Name System root zone of the Internet, redirecting
185 requests for each Top-Level Domain to its respective nameservers.

186 "Memorandum of understanding" means a performance agreement or related document entered into by an
187 Internet root infrastructure provider and the Authority on or after January 1, 2023, but before December 1,
188 2023, that sets forth the requirements for commitments to the Commonwealth.

189 B. 1. For taxable years beginning on or after January 1, 2023, but before January 1, 2030, an Internet root
190 infrastructure provider shall be subject to the provisions of subdivision B 3 of § 58.1-416 *or subdivision B 3*
191 *of § 58.1-416.1, as applicable*, only if the Authority certifies to the Department that the taxpayer has at least
192 550 full-time employees with an average annual salary of \$175,000 in an eligible planning district, has
193 entered into a memorandum of understanding with the Authority, and has met the terms of such agreement.

194 2. For taxable years beginning on or after January 1, 2030, if the Authority certifies to the Department that
195 all requirements of the memorandum of understanding have been satisfied, no additional certifications shall
196 be required, and the Internet root infrastructure provider shall continue to be subject to the provisions of
197 subdivision B 3 of § ~~58.1-416~~ 58.1-416.1 in future taxable years.

198 C. The General Assembly finds that the presence of the Internet root infrastructure provider industry is
199 essential to the continued fiscal health of the Commonwealth. If any provision of this section is for any
200 reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that
201 provision shall not be deemed severable.

202 **2. That the third enactments of Chapters 256 and 257 of the Acts of Assembly of 2022 are repealed**
203 **effective for taxable years beginning on and after January 1, 2026.**

204 **3. That the Tax Commissioner shall develop guidelines implementing the provisions of this act. Such**
205 **guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of**
206 **the Code of Virginia).**

207 **4. That nothing in this act is intended to supersede or require the Tax Commissioner to revoke any**
208 **existing guidelines regarding market-based sourcing for debt buyers as defined in § 58.1-422.3 of the**
209 **Code of Virginia, property information and analytics firms as defined in § 58.1-422.4 of the Code of**
210 **Virginia, and Internet root infrastructure providers as defined in § 58.1-422.5 of the Code of Virginia.**