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SENATE BILL NO. 767

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 22, 2013)

(Patrons Prior to Substitute—Senators Wagner and Hanger [SB 1094])

A BILL to amend and reenact §§ 58.1-602, 58.1-603, 58.1-612, as it is currently effective and as it shall become effective, 58.1-3819, 58.1-3823, 58.1-3824, 58.1-3825, 58.1-3825.2, 58.1-3826, 58.1-3842, and 58.1-3843 of the Code of Virginia; Chapter 265 of the Acts of Assembly of 1977, as amended by Chapter 675 of the Acts of Assembly of 1984 and Chapter 834 of the Acts of Assembly of 1992, carried by reference in the Code of Virginia as § 58.1-3820; and Chapter 436 of the Acts of Assembly of 1990, as amended by Chapter 896 of the Acts of Assembly of 1994 and Chapter 111 of the Acts of Assembly of 2006, carried by reference in the Code of Virginia as § 58.1-3821; and to amend the Code of Virginia by adding in Article 6 of Chapter 38 of Title 58.1 a section numbered 58.1-3818.8, relating to retail sales taxes and transient occupancy taxes on the rental of rooms, lodgings, accommodations, or similar spaces.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-602, 58.1-603, 58.1-612, as it is currently effective and as it shall become effective, 58.1-3819, 58.1-3823, 58.1-3824, 58.1-3825, 58.1-3825.2, 58.1-3826, 58.1-3842, and 58.1-3843 of the Code of Virginia; Chapter 265 of the Acts of Assembly of 1977, as amended by Chapter 675 of the Acts of Assembly of 1984 and Chapter 834 of the Acts of Assembly of 1992, carried by reference in the Code of Virginia as § 58.1-3820; and Chapter 436 of the Acts of Assembly of 1990, as amended by Chapter 896 of the Acts of Assembly of 1994 and Chapter 111 of the Acts of Assembly of 2006, carried by reference in the Code of Virginia as § 58.1-3821, are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 38 of Title 58.1 a section numbered 58.1-3818.8 as follows:

§ 58.1-602. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase requires a different meaning:

"Accommodations" means any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodgings, space, or accommodations are regularly furnished to transients for a consideration.

"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 facilitates the sale of an accommodation, acts as the merchant of record, 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. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of or the right to use accommodations by a customer.

"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 herein 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 and distribution equipment" means, but is not limited to, 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.

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

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

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom

60 computer program. A prewritten program that is modified to any degree remains a prewritten program
61 and does not become custom.

62 *"Discount room charge" means the full amount charged by the accommodations provider to the*
63 *accommodations intermediary (or an affiliate thereof) for furnishing the accommodation.*

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

69 "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental
70 of tangible personal property or for furnishing services, computed with the same deductions, where
71 applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use,
72 but not less frequently than monthly.

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

79 "Import" and "imported" are words applicable to tangible personal property imported into the
80 Commonwealth from other states as well as from foreign countries, and "export" and "exported" are
81 words applicable to tangible personal property exported from the Commonwealth to other states as well
82 as to foreign countries.

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

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

94 "Internet" means collectively, the myriad of computer and telecommunications facilities, which
95 comprise the interconnected world-wide network of computer networks.

96 "Internet service" means a service that enables users to access proprietary and other content,
97 information electronic mail, and the Internet as part of a package of services sold to end-user
98 subscribers.

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

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

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

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

122 Act of 1974 (42 U.S.C. § 5401 et seq.).

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

128 "Modular building retailer" means any person who purchases or acquires a modular building from a
129 modular building manufacturer, or from another person, for subsequent sale to a customer residing
130 within or outside of the Commonwealth, with or without installation of the modular building to the
131 foundation at the permanent site.

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

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

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

143 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,
144 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,
145 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body
146 politic or political subdivision, whether public or private, or quasi-public, and the plural of such term
147 shall mean the same as the singular.

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

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

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

160 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
161 charges for any ~~room or rooms, lodgings, or accommodations~~ furnished to transients for less than 90
162 continuous days ~~by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any~~
163 ~~other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for~~
164 ~~a consideration~~; (ii) sales of tangible personal property to persons for resale when because of the
165 operation of the business, or its very nature, or the lack of a place of business in which to display a
166 certificate of registration, or the lack of a place of business in which to keep records, or the lack of
167 adequate records, or because such persons are minors or transients, or because such persons are engaged
168 in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will
169 lose tax funds due to the difficulty of policing such business operations; and (iii) the separately stated
170 charge made for automotive refinish repair materials that are permanently applied to or affixed to a
171 motor vehicle during its repair. The Tax Commissioner is authorized to promulgate regulations requiring
172 vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such
173 tangible personal property to such persons and may refuse to issue certificates of registration to such
174 persons.

175 *In the case of the "retail sale" of any accommodations made by an accommodations provider in*
176 *which an accommodations intermediary does not facilitate the sale of the accommodations, the*
177 *accommodations provider shall collect the retail sales and use taxes imposed in accordance with this*
178 *chapter, computed on the total charges for the accommodations, and shall remit the same to the*
179 *Department and shall be liable for the same.*

180 *In the case of the "retail sale" of any accommodations in which an accommodations intermediary*
181 *facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary*
182 *the retail sales and use taxes imposed in accordance with this chapter, computed on the discount room*

183 charge, and shall remit the same to the Department and shall be liable for the same, and (ii) the
184 accommodations intermediary shall collect the retail sales and use taxes imposed in accordance with
185 this chapter, computed on the room charge, and shall (a) remit the portion of such taxes that relates to
186 the accommodations fee to the Department and shall be liable for the same and (b) remit the portion of
187 such taxes that relates to the discount room charge to the accommodations provider for purposes of
188 payment of the tax under clause (i) and shall be liable for the same. In the case of the "retail sale" of
189 any accommodations in which an accommodations intermediary facilitates the sale, the accommodations
190 intermediary shall be deemed under this chapter as a dealer making a retail sale of an accommodation.

191 An accommodations intermediary shall not be liable for retail sales and use taxes relating to the
192 discount room charge remitted to an accommodations provider but which are not then remitted to the
193 Department by the accommodations provider.

194 In the case of the "retail sale" of any accommodations in which an accommodations intermediary
195 facilitates the sale, nothing herein shall relieve the accommodations provider from liability for retail
196 sales and use taxes on any charges made by the accommodations provider for the accommodations,
197 which charges are in addition to the discount room charge.

198 In any "retail sale" of any accommodations, the accommodations intermediary shall separately state
199 the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room
200 charge; thereafter such tax shall be a debt from the person renting the accommodations to the
201 accommodations intermediary, recoverable at law in the same manner as other debts.

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

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

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

215 "Room charge" means the full retail price charged to the customer by the accommodations
216 intermediary for the use of the accommodations, including any accommodations fee before taxes. The
217 room charge shall be determined in accordance with 23 VAC 10-210-730 and the related rulings of the
218 Department on the same.

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

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

242 "Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring,
243 lighting, equipment, and all other property used to reduce contamination or to control airflow,
244 temperature, humidity, vibration, or other environmental conditions required for the integrated process of

245 semiconductor manufacturing.

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

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

259 "Tangible personal property" means personal property which may be seen, weighed, measured, felt,
 260 or touched, or is in any other manner perceptible to the senses. The term "tangible personal property"
 261 shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible
 262 personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt
 263 from all other state and local utility taxes, and (ii) manufactured signs.

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

271 "Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein
 272 defined.

273 "Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to
 274 those activities which are an integral part of the production of a product, including all steps of an
 275 integrated manufacturing or mining process, but not including ancillary activities such as general
 276 maintenance or administration. When used in relation to mining, it shall refer to the activities specified
 277 above, and in addition, any reclamation activity of the land previously mined by the mining company
 278 required by state or federal law.

279 "Video programmer" means a person or entity that provides video programming to end-user
 280 subscribers.

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

284 **§ 58.1-603. Imposition of sales tax.**

285 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now
 286 imposed by law, a license or privilege tax upon every person who engages in the business of selling at
 287 retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of
 288 the things or services taxable under this chapter, or who stores for use or consumption in this
 289 Commonwealth any item or article of tangible personal property as defined in this chapter, or who
 290 leases or rents such property within this Commonwealth, in the amount of three and one-half percent
 291 through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

292 1. Of the gross sales price of each item or article of tangible personal property when sold at retail or
 293 distributed in this Commonwealth.

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

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

299 4. Of the gross proceeds derived from the sale or charges for ~~rooms, lodgings or~~ accommodations
 300 furnished to transients as set out in the definition of "retail sale" in § 58.1-602.

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

302 **§ 58.1-612. (Contingent expiration date) Tax collectible from dealers; "dealer" defined;**
 303 **jurisdiction.**

304 A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons who are dealers,
 305 as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under

306 subsections B and C hereof.

307 B. The term "dealer," as used in this chapter, shall include every person who:

308 1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or
309 distribution, or for storage to be used or consumed in this Commonwealth;

310 2. Imports or causes to be imported into this Commonwealth tangible personal property from any
311 state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used
312 or consumed in this Commonwealth;

313 3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for
314 use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible
315 personal property;

316 4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this
317 Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has
318 been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal
319 property;

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

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

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

327 8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter,
328 whether he holds, or is required to hold, a certificate of registration under § 58.1-613; *or*

329 9. *Is an accommodations intermediary as defined in § 58.1-602 facilitating the sale of an*
330 *accommodation located in the Commonwealth.*

331 C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require
332 registration under § 58.1-613 if he:

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

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

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

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

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

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

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

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

355 9. Owns tangible personal property that is rented or leased to a consumer in this Commonwealth, or
356 offers tangible personal property, on approval, to consumers in this Commonwealth; *or*

357 10. *Is an accommodations intermediary as defined in § 58.1-602 that regularly facilitates the sale of*
358 *an accommodation located in the Commonwealth.*

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

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

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

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

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

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

383 **§ 58.1-612. (Contingent effective date) Tax collectible from dealers; "dealer" defined;**
384 **jurisdiction.**

385 A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons who are dealers,
386 as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under
387 subsections (i) B and C or (ii) B and D hereof.

388 B. The term "dealer," as used in this chapter, shall include every person who:

389 1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or
390 distribution, or for storage to be used or consumed in this Commonwealth;

391 2. Imports or causes to be imported into this Commonwealth tangible personal property from any
392 state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used
393 or consumed in this Commonwealth;

394 3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for
395 use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible
396 personal property;

397 4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this
398 Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has
399 been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal
400 property;

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

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

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

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

410 9. *Is an accommodations intermediary as defined in § 58.1-602 facilitating the sale of an*
411 *accommodation located in the Commonwealth.*

412 C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require
413 registration under § 58.1-613 if he:

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

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

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

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

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

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

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

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

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

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

438 10. *Is an accommodations intermediary as defined in § 58.1-602 that regularly facilitates the sale of*
439 *an accommodation located in the Commonwealth.*

440 D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration
441 under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled
442 person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the
443 Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its
444 customers. The presumption in this subsection may be rebutted by demonstrating that the activities
445 conducted by the commonly controlled person in the Commonwealth are not significantly associated
446 with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales.
447 For purposes of this subsection, a "commonly controlled person" means any person that is a member of
448 the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of
449 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of
450 organization, bears the same ownership relationship to the dealer as a corporation that is a member of
451 the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of
452 1954, as amended or renumbered.

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

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

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

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

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

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

476 **§ 58.1-3818.8. Definitions.**

477 *As used in this article, unless the context requires a different meaning:*

478 *"Accommodations" means any room, space, or unit for which tax is imposed on the retail sale of the*
479 *same pursuant to this article.*

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

482 *"Accommodations intermediary" means any person other than an accommodations provider that*
483 *facilitates the sale of an accommodation, acts as the merchant of record, charges a room charge to the*
484 *customer, and charges an accommodations fee to the customer, which fee it retains as compensation for*
485 *facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering,*
486 *coordinating, or in any other way arranging for the purchase of or the right to use accommodations by*
487 *a customer.*

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

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

492 "Discount charge" means the full amount charged by the accommodations provider to the
493 accommodations intermediary (or an affiliate thereof) for furnishing the accommodation.

494 "Retail sale" means a sale to any person for any purpose other than for resale.

495 "Room charge" means the same as such term is defined in § 58.1-602.

496 **§ 58.1-3819. Transient occupancy tax.**

497 A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels,
498 boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous
499 occupancy for fewer than 30 consecutive days. *The tax shall be imposed on the total price paid by the*
500 *ultimate consumer for the use or possession of the room or space occupied in a retail sale.* Such tax
501 shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such
502 tax shall not exceed two percent of the ~~amount of charge for the occupancy of any room or space~~
503 ~~occupied~~ *total price paid by the ultimate consumer for the use or possession of the room or space*
504 *occupied in a retail sale;* however, Accomack County, Albemarle County, Alleghany County, Amherst
505 County, Augusta County, Bedford County, Botetourt County, Brunswick County, Campbell County,
506 Caroline County, Carroll County, Craig County, Cumberland County, Dinwiddie County, Floyd County,
507 Franklin County, Giles County, Gloucester County, Greene County, Halifax County, James City County,
508 King George County, Loudoun County, Madison County, Mecklenburg County, Montgomery County,
509 Nelson County, Northampton County, Page County, Patrick County, Prince Edward County, Prince
510 George County, Prince William County, Pulaski County, Rockbridge County, Smyth County,
511 Spotsylvania County, Stafford County, Tazewell County, Washington County, Wise County, Wythe
512 County, and York County may levy a transient occupancy tax not to exceed five percent, and any excess
513 over two percent shall be designated and spent solely for tourism and travel, marketing of tourism or
514 initiatives that, as determined after consultation with the local tourism industry organizations, including
515 representatives of lodging properties located in the county, attract travelers to the locality, increase
516 occupancy at lodging properties, and generate tourism revenues in the locality. If any locality has
517 enacted an additional transient occupancy tax pursuant to subsection C of § 58.1-3823, then the
518 governing body of the locality shall be deemed to have complied with the requirement that it consult
519 with local tourism industry organizations, including lodging properties. If there are no local tourism
520 industry organizations in the locality, the governing body shall hold a public hearing prior to making
521 any determination relating to how to attract travelers to the locality and generate tourism revenues in the
522 locality.

523 B. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied
524 by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding
525 houses, travel campgrounds, and other facilities offering guest rooms. In addition, that portion of any tax
526 imposed hereunder in excess of two percent shall not apply to travel campgrounds in Stafford County.

527 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
528 to levy such a transient occupancy tax. The county tax limitations imposed pursuant to § 58.1-3711 shall
529 apply to any tax levied under this section, mutatis mutandis.

530 D. Any county, city, or town which requires local hotel and motel businesses, or any class thereof, to
531 collect, account for and remit to such locality a ~~local~~ *the transient occupancy* tax imposed on the
532 consumer, may allow such businesses a commission for such service in the form of a deduction from
533 the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof,
534 no less than three percent, not to exceed five percent of the amount of tax due and accounted for. No
535 commission shall be allowed if the amount due was delinquent.

536 E. All transient occupancy tax collections shall be deemed to be held in trust for the county, city or
537 town imposing the tax.

538 **§ 58.1-3820. Arlington County transient occupancy tax.**

539 Notwithstanding the provisions of Chapter 443, as amended, of the Acts of Assembly of 1970 carried
540 by reference in the Code of Virginia as § 58.1-3819, beginning on and after July 1, 1977, Arlington
541 County is authorized to levy the transient occupancy tax permitted in § 58.1-3819 in an amount not to
542 exceed five percent of the ~~amount of the charge for the occupancy of any room or space occupied~~ *total*
543 *price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail*
544 *sale,* provided that the county's local license tax as permitted in § 58.1-3703, as amended, on hotels,
545 motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for
546 continuous occupancy for fewer than ~~thirty~~ 30 consecutive days, on and after January 1, 1978, shall not
547 exceed one percent of the gross receipts of such hotels, motels, boarding houses, travel campgrounds,
548 and other facilities offering guest rooms rented out for continuous occupancy for fewer than ~~thirty~~ 30
549 consecutive days. For purposes of this section, a corporation or partnership shall be deemed an
550 individual or group unless provided otherwise by local ordinance. For purposes of exercising the
551 authority granted by this section, those ordinances enacted by Arlington County on October 26, 1991,

552 and December 7, 1991, are validated as to their application, prospectively only, from the date of their
 553 enactment. The remaining provisions of § 58.1-3819 shall apply mutatis mutandis to the provisions of
 554 this section.

555 **§ 58.1-3821. Transient occupancy tax on certain rentals.**

556 The County of Franklin and the County of Nelson may, by ordinance, levy a transient occupancy tax
 557 on condominiums, apartments, townhouses, or like buildings when rooms or units in such buildings are
 558 rented for occupancy for fewer than ~~thirty~~ 30 days at a time. The tax imposed hereunder shall not apply
 559 to rooms or units rented for continuous occupancy by the same individual or group for 30 or more days
 560 in condominiums, apartments, townhouses, or like buildings.

561 Such tax shall be in an amount and on such terms as the governing body, by ordinance, may
 562 prescribe; however, in the County of Franklin such tax shall not exceed two percent of the ~~amount of~~
 563 ~~charge for the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for*
 564 *the use or possession of the room or unit occupied in a retail sale* and in the County of Nelson such tax
 565 shall not exceed ~~5%~~ *five percent* of the ~~amount of charge for the occupancy of any room or space~~
 566 ~~occupied~~ *total price paid by the ultimate consumer for the use or possession of the room or unit*
 567 *occupied in a retail sale*. Any revenue collected in Nelson County from that portion of the tax which
 568 exceeds ~~2%~~, *two percent* shall be designated and spent for promoting tourism, travel, or business that
 569 generates tourism or travel in the county. Any county which imposes the tax authorized in this section
 570 may allow the businesses collecting, accounting for, and remitting such consumer tax a commission for
 571 such service in the form of a deduction from the tax remitted. The commission amount shall be
 572 established by ordinance; however, the maximum commission payable shall not exceed five percent of
 573 the amount of tax due and accounted for nor be less than a minimum of three percent of the amount of
 574 tax due. No commission shall be allowed if the amount due was delinquent.

575 **§ 58.1-3823. Additional transient occupancy tax for certain counties.**

576 A. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through
 577 58.1-3822, Hanover County, Chesterfield County, and Henrico County may impose:

578 1. An additional transient occupancy tax not to exceed four percent of the ~~amount of the charge for~~
 579 ~~the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or*
 580 *possession of any room or space occupied in a retail sale*. The tax imposed hereunder shall not apply to
 581 rooms or spaces rented and continuously occupied by the same individual or same group of individuals
 582 for 30 or more days. The revenues collected from the additional tax shall be designated and spent for
 583 promoting tourism, travel, or business that generates tourism or travel in the Richmond metropolitan
 584 area; and

585 2. An additional transient occupancy tax not to exceed two percent of the ~~amount of the charge for~~
 586 ~~the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or*
 587 *possession of any room or space occupied in a retail sale*. The tax imposed hereunder shall not apply to
 588 rooms or spaces rented and continuously occupied by the same individual or same group of individuals
 589 for 30 or more days. The revenues collected from the additional tax shall be designated and spent for
 590 expanding the Richmond Centre, a convention and exhibition facility in the City of Richmond.

591 3. An additional transient occupancy tax not to exceed one percent of the ~~amount of the charge for~~
 592 ~~the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or*
 593 *possession of any room or space occupied in a retail sale*. The tax imposed hereunder shall not apply to
 594 rooms or spaces rented and continuously occupied by the same individual or group of individuals for 30
 595 or more days. The revenues collected from the additional tax shall be designated and spent for the
 596 development and improvement of the Virginia Performing Arts Foundation's facilities in Richmond, for
 597 promoting the use of the Richmond Centre and for promoting tourism, travel or business that generates
 598 tourism and travel in the Richmond metropolitan area.

599 B. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through
 600 58.1-3822, any county with the county manager plan of government may impose an additional transient
 601 occupancy tax not to exceed two percent of the ~~amount of the charge for the occupancy of any room or~~
 602 ~~space occupied~~ *total price paid by the ultimate consumer for the use or possession of any room or*
 603 *space occupied in a retail sale*, provided the county's governing body approves the construction of a
 604 county conference center. The tax imposed hereunder shall not apply to rooms or spaces rented and
 605 continuously occupied by the same individual or same group of individuals for 30 or more days. The
 606 revenues collected from the additional tax shall be designated and spent for the design, construction,
 607 debt payment, and operation of such conference center.

608 C. 1. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through
 609 58.1-3822, the Counties of James City and York may impose an additional transient occupancy tax *for*
 610 *the use or possession of any overnight guest room in an amount* not to exceed \$2 per room per night
 611 ~~for the occupancy of any overnight guest room~~. The revenues collected from the additional tax shall be
 612 designated and expended solely for advertising the Historic Triangle area, which includes all of the City
 613 of Williamsburg and the Counties of James City and York, as an overnight tourism destination by the

614 members of the Williamsburg Area Destination Marketing Committee of the Greater Williamsburg
615 Chamber and Tourism Alliance. The tax imposed by this subsection shall not apply to travel
616 campground sites or to rooms or spaces rented and continuously occupied by the same individual or
617 same group of individuals for 30 or more days.

618 2. The Williamsburg Area Destination Marketing Committee shall consist of the members as
619 provided herein. The governing bodies of the City of Williamsburg, the County of James City, and the
620 County of York shall each designate one of their members to serve as members of the Williamsburg
621 Area Destination Marketing Committee. These three members of the Committee shall have two votes
622 apiece. In no case shall a person who is a member of the Committee by virtue of the designation of a
623 local governing body be eligible to be selected a member of the Committee pursuant to subdivision a.

624 a. Further, one member of the Committee shall be selected by the Board of Directors of the
625 Williamsburg Hotel and Motel Association; one member of the Committee shall be from The Colonial
626 Williamsburg Foundation and shall be selected by the Foundation; one member of the Committee shall
627 be an employee of Busch Gardens Europe/Water Country USA and shall be selected by Busch Gardens
628 Europe/Water Country USA; one member of the Committee shall be from the Jamestown-Yorktown
629 Foundation and shall be selected by the Foundation; one member of the Committee shall be selected by
630 the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance; and one member
631 of the Committee shall be the President and Chief Executive Officer of the Virginia Tourism Authority
632 who shall serve ex officio. Each of these six members of the Committee shall have one vote apiece. The
633 President of the Greater Williamsburg Chamber and Tourism Alliance shall serve ex officio with
634 nonvoting privileges unless chosen by the Executive Committee of the Greater Williamsburg Chamber
635 and Tourism Alliance to serve as its voting representative. The Executive Director of the Williamsburg
636 Hotel and Motel Association shall serve ex officio with nonvoting privileges unless chosen by the Board
637 of Directors of the Williamsburg Hotel and Motel Association to serve as its voting representative.

638 In no case shall more than one person of the same local government, including the governing body
639 of the locality, serve as a member of the Committee at the same time.

640 If at any time a person who has been selected to the Committee by other than a local governing
641 body becomes or is ~~(a)~~ (i) a member of the local governing body of the City of Williamsburg, the
642 County of James City, or the County of York, or ~~(b)~~ (ii) an employee of one of such local governments,
643 the person shall be ineligible to serve as a member of the Committee while a member of the local
644 governing body or an employee of one of such local governments. In such case, the body that selected
645 the person to serve as a member of the Commission shall promptly select another person to serve as a
646 member of the Committee.

647 3. The Williamsburg Area Destination Marketing Committee shall maintain all authorities granted by
648 this section. The Greater Williamsburg Chamber and Tourism Alliance shall serve as the fiscal agent for
649 the Williamsburg Area Destination Marketing Committee with specific responsibilities to be defined in a
650 contract between such two entities. The contract shall include provisions to reimburse the Greater
651 Williamsburg Chamber and Tourism Alliance for annual audits and any other agreed-upon expenditures.
652 The Williamsburg Area Destination Marketing Committee shall also contract with the Greater
653 Williamsburg Chamber and Tourism Alliance to provide administrative support services as the entities
654 shall mutually agree.

655 4. The provisions in subdivision 2 relating to the composition and voting powers of the Williamsburg
656 Area Destination Marketing Committee shall be a condition of the authority to impose the tax provided
657 herein.

658 For purposes of this subsection, "advertising the Historic Triangle area" as an overnight tourism
659 destination means advertising that is intended to attract visitors from a sufficient distance so as to
660 require an overnight stay of at least one night.

661 D. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under
662 this section, mutatis mutandis.

663 **§ 58.1-3824. Additional transient occupancy tax in Fairfax County.**

664 In addition to such transient occupancy taxes as are authorized by this chapter, beginning July 1,
665 2004, Fairfax County may impose an additional transient occupancy tax not to exceed two percent of
666 the amount of charge for the occupancy of any room or space occupied; total price paid by the ultimate
667 consumer for the use or possession of any room or space occupied in a retail sale, provided that the
668 board of supervisors of the County appropriates the revenues collected from such tax as follows:

669 1. No more than 75 percent of such revenues shall be designated for and appropriated to Fairfax
670 County to be spent for tourism promotion in the County after consultation with local tourism industry
671 organizations and in support of the local tourism industry; and

672 2. The remaining portion of such revenues shall be designated for and appropriated to a nonprofit
673 convention and visitor's bureau located in Fairfax County.

674 The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by

675 the same individual or same group of individuals for 30 or more days.

676 For purposes of this section, "tourism promotion" means direct funding designated and spent solely
677 for tourism, marketing of tourism or initiatives that, as determined in consultation with the local tourism
678 industry organizations, attract travelers to the locality and generate tourism revenues in the locality.

679 **§ 58.1-3825. Additional transient occupancy tax in Rockbridge County and the Cities of**
680 **Lexington and Buena Vista.**

681 In addition to such transient occupancy taxes as are authorized by this chapter, Rockbridge County
682 and the Cities of Lexington and Buena Vista may impose an additional transient occupancy tax not to
683 exceed two percent of the ~~amount of charge for the occupancy of any room or space occupied~~ *total*
684 *price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail*
685 *sale*. The authority to impose such tax is hereby individually granted to the local governing bodies of
686 such county and cities. However, if such tax is adopted, the local governing body of such county or
687 cities adopting the tax shall appropriate the revenues collected therefrom to the Virginia Horse Center
688 Foundation to be used by the Foundation for the sole purpose of making principal and interest payments
689 on a promissory note or notes signed or executed by the Virginia Horse Center Foundation or the
690 Virginia Equine Center Foundation prior to January 1, 2004, with the Rockbridge Industrial
691 Development Authority as the obligee or payee, as part of an agreement for the Authority to issue bonds
692 on behalf of or for improvements at the Virginia Horse Center Foundation, Virginia Equine Center
693 Foundation, or Virginia Equine Center.

694 For purposes of this section, such note or notes signed or executed prior to January 1, 2004, shall
695 include any notes or other indebtedness incurred to refinance such note or notes, regardless of the date
696 of refinancing, provided that such refinancing shall not include any debt or the payment of any debt for
697 any activity relating to the Virginia Horse Center Foundation, Virginia Equine Center Foundation, or
698 Virginia Equine Center that occurs on or after January 1, 2004.

699 The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by
700 the same individual or same group of individuals for 30 or more days. Such tax may no longer be
701 imposed in such county or such cities after final payment of the note or notes described herein.

702 **§ 58.1-3825.2. Additional transient occupancy tax in Bath County.**

703 A. In addition to such transient occupancy tax as is authorized by § 58.1-3819, Bath County may
704 impose an additional transient occupancy tax not to exceed two percent of the ~~amount of the charge for~~
705 ~~the occupancy of any room or space occupied~~ *total price paid by the ultimate consumer for the use or*
706 *possession of any room or space occupied in a retail sale*.

707 B. The revenues collected from the additional tax shall be designated and spent as follows:

708 1. One-half of such revenue shall be designated and spent solely for tourism and travel, marketing of
709 tourism, or initiatives that, as determined after consultation with the local tourism industry organizations,
710 attract travelers to the locality and generate tourism revenues in the locality. If there are no local tourism
711 industry organizations in the locality, the governing body shall hold a public hearing prior to making
712 any determination relating to how to attract travelers to the locality and generate tourism revenues in the
713 locality.

714 2. One-half of such revenue shall be designated and spent solely for the design, operation,
715 construction, improvement, acquisition, and debt service for such expenses on debt incurred after June
716 30, 2009, of tourism facilities, historic sites, beautification projects, promotion of the arts, regional
717 tourism marketing efforts, capital costs related to travel and transportation including air service, public
718 parks and recreation, and information centers that attract travelers to the locality and generate tourism
719 revenues in the locality.

720 C. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied
721 by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding
722 houses, travel campgrounds, and other facilities offering guest rooms.

723 D. If Bath County requires local hotel and motel businesses, or any class thereof, to collect, account
724 for, and remit the tax imposed pursuant to this section, the County may allow such businesses a
725 commission for such service in the form of a deduction from the tax remitted. Such commission shall be
726 provided for by ordinance, which shall set the rate thereof, no less than three percent and not to exceed
727 five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount
728 due is delinquent.

729 E. All tax collections pursuant to this section shall be deemed to be held in trust for Bath County.

730 **§ 58.1-3826. Scope of transient occupancy tax.**

731 A. The transient occupancy tax imposed pursuant to the authority of this article shall be imposed
732 only for the ~~occupancy use or possession~~ of any room or space that is suitable or intended for
733 occupancy by transients for dwelling, lodging, or sleeping purposes.

734 B. *In the case of the retail sale of any accommodations made by an accommodations provider and in*
735 *which an accommodations intermediary does not facilitate the sale of the accommodations, the*
736 *accommodations provider shall collect the tax imposed pursuant to this article, computed on the total*

737 price paid for the use or possession of the accommodations, and shall remit the same to the locality and
738 shall be liable for the same.

739 In the case of the retail sale of any accommodations in which an accommodations intermediary
740 facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary
741 the tax imposed pursuant to this article, computed on the discount charge, and shall remit the same to
742 the locality and shall be liable for the same, and (ii) the accommodations intermediary shall collect the
743 tax imposed pursuant to this article, computed on the room charge, and shall (a) remit the portion of
744 such tax that relates to the accommodations fee to the locality and shall be liable for the same and (b)
745 remit the portion of such tax that relates to the discount charge to the accommodations provider for
746 purposes of payment of the tax under clause (i) and shall be liable for the same. In the case of the
747 retail sale of any accommodations in which an accommodations intermediary facilitates the sale, the
748 accommodations intermediary shall be deemed under this article as a facility making a retail sale of an
749 accommodation.

750 An accommodations intermediary shall not be liable for taxes under this article relating to the
751 discount charges that are remitted to an accommodations provider but which are not then remitted to
752 the locality by the accommodations provider. An accommodations intermediary shall not be liable for
753 taxes under this article solely because it collected such taxes using the tax rate for the applicable
754 locality as set forth in a table maintained by the Department on its website, which tax rate was
755 incorrectly reported on the Department's website at the time of the retail sale.

756 In any retail sale of any accommodations, the accommodations intermediary shall separately state
757 the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room
758 charge; thereafter such tax shall be a debt from the person renting the accommodations to the
759 accommodations intermediary, recoverable at law in the same manner as other debts.

760 **§ 58.1-3842. Combined transient occupancy and food and beverage tax.**

761 A. Rappahannock County and Madison County, by duly adopted ordinance, are hereby authorized to
762 levy a tax on ~~occupancy~~ for the use or possession of any room or space occupied in a bed and breakfast
763 establishment on which the county is authorized to levy a transient occupancy tax under § 58.1-3819 and
764 on food and beverages sold for human consumption within such establishment on which the county is
765 authorized to levy a food and beverage tax under § 58.1-3833, when the charges for the ~~occupancy use~~
766 or possession of the room or space and for the sale of food and beverages are assessed in the aggregate
767 and not separately stated. Such tax shall not exceed four percent of the total ~~amount charged for the~~
768 ~~occupancy of the room or space occupied~~ price paid by the ultimate consumer for the use or possession
769 of the room or space occupied and for the food and beverages. Such tax shall be in such amount and on
770 such terms as the governing body may, by ordinance, prescribe. The tax shall be in addition to the sales
771 tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.).
772 Collection of such tax shall be in a manner prescribed by the governing body. All taxes collected under
773 the authority of this article shall be deemed to be held in trust for the county imposing the tax.

774 B. If a bed and breakfast establishment separately states charges for the ~~occupancy use or possession~~
775 of the room or space and for the sale of food and beverages, a transient occupancy tax levied under
776 § 58.1-3819 and a food and beverage tax levied under § 58.1-3833 shall apply to such separately stated
777 charges, as applicable.

778 C. Any tax imposed pursuant to this article shall not apply within the limits of any town located in
779 such county, where such town now, or hereafter, imposes a town meals tax or a town transient
780 occupancy tax on the same subject. If the governing body of any town within a county, however,
781 provides that a county tax authorized by this article shall apply within the limits of such town, then such
782 tax may be imposed within such towns.

783 D. This tax shall be levied only if a food and beverage tax has been approved in a referendum
784 within the county as provided by subsection A of § 58.1-3833. No county in which the levy of a food
785 and beverage tax has been approved in a referendum pursuant to subsection A of § 58.1-3833 shall be
786 required to submit an amendment to its meals tax ordinance or a further question to the voters in a
787 referendum prior to adopting an ordinance adopting or amending the tax authorized by this article.

788 E. Nothing herein contained shall affect any authority heretofore granted to any county to levy a
789 food and beverage tax or a transient occupancy tax.

790 **§ 58.1-3843. Scope of transient occupancy tax.**

- 791 A. As used in this section, unless the context requires a different meaning:
- 792 "Accommodations" means any room or space for which tax is imposed on the retail sale of the same
- 793 pursuant to this article.
- 794 "Accommodations fee" means the same as such term is defined in § 58.1-3818.8.
- 795 "Accommodations intermediary" means the same as such term is defined in § 58.1-3818.8.
- 796 "Accommodations provider" means the same as such term is defined in § 58.1-3818.8.
- 797 "Discount charge" means the same as such term is defined in § 58.1-3818.8.

798 *"Retail sale" means the same as such term is defined in § 58.1-3818.8.*

799 *"Room charge" means the same as such term is defined in § 58.1-3818.8.*

800 B. Notwithstanding any other provision of law, general or special, the tax imposed on transient room
801 rentals pursuant to the authority of this article shall be imposed only for the ~~occupancy~~ use or
802 possession of any room or space that is suitable or intended for occupancy by transients for dwelling,
803 lodging, or sleeping purposes.

804 C. *In the case of the retail sale of any accommodations made by an accommodations provider and in*
805 *which an accommodations intermediary does not facilitate the sale of the accommodations, the*
806 *accommodations provider shall collect the tax imposed pursuant to this article, computed on the total*
807 *price paid for the use or possession of the accommodations, and shall remit the same to the locality and*
808 *shall be liable for the same.*

809 *In the case of the retail sale of any accommodations in which an accommodations intermediary*
810 *facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary*
811 *the tax imposed pursuant to this article, computed on the discount charge, and shall remit the same to*
812 *the locality and shall be liable for the same and (ii) the accommodations intermediary shall collect the*
813 *tax imposed pursuant to this article, computed on the room charge, and shall (a) remit the portion of*
814 *such tax that relates to the accommodations fee to the locality and shall be liable for the same and (b)*
815 *remit the portion of such tax that relates to the discount charge to the accommodations provider for*
816 *purposes of payment of the tax under clause (i) and shall be liable for the same. In the case of the*
817 *retail sale of any accommodations in which an accommodations intermediary facilitates the sale, the*
818 *accommodations intermediary shall be deemed under this article as a person making a retail sale of an*
819 *accommodation.*

820 *An accommodations intermediary shall not be liable for taxes under this article relating to the*
821 *discount charges that are remitted to an accommodations provider but which are not then remitted to*
822 *the locality by the accommodations provider. An accommodations intermediary shall not be liable for*
823 *taxes under this article solely because it collected such taxes using the tax rate for the applicable*
824 *locality as set forth in a table maintained by the Department on its website, which tax rate was*
825 *incorrectly reported on the Department's website at the time of the retail sale.*

826 *In any retail sale of any accommodations, the accommodations intermediary shall separately state*
827 *the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room*
828 *charge; thereafter such tax shall be a debt from the person renting the accommodations to the*
829 *accommodations intermediary, recoverable at law in the same manner as other debts.*

830 **2. That the Department of Taxation shall develop and make publicly available guidelines no later**
831 **than August 1, 2013, for purposes of developing processes and procedures implementing the**
832 **amendments to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia pursuant to the**
833 **provisions of this act. The development, issuance, and publication of the guidelines shall be exempt**
834 **from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**

835 **3. That the Department of Taxation shall maintain on its website a current table indicating the**
836 **rate of the local transient occupancy tax imposed by each county, city, and town of the**
837 **Commonwealth. Every county, city, and town that imposes a transient occupancy tax shall no later**
838 **than seven days after making a change to the rate of the tax provide written notice of the same to**
839 **the Tax Commissioner for the purpose of the Department updating the table.**

840 **4. That except for the second enactment of this act, which shall become effective on July 1, 2013,**
841 **the provisions of this act shall become effective on January 1, 2014.**