

2003 SESSION

036078456

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53

SENATE BILL NO. 1348

Offered January 20, 2003

A BILL to amend and reenact §§ 58.1-320, 58.1-322, 58.1-339.8, 58.1-400, 58.1-602, 58.1-603, 58.1-609.5, 58.1-611.1, and 58.1-612 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 sections numbered 58.1-339.11 and 58.1-339.12, relating to restructuring Virginia's tax code.

Patrons—Lucas and Reynolds

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-320, 58.1-322, 58.1-339.8, 58.1-400, 58.1-602, 58.1-603, 58.1-609.5, 58.1-611.1, and 58.1-612 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 sections numbered 58.1-339.11 and 58.1-339.12 as follows:

§ 58.1-320. Imposition of tax.

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

Two percent on income not exceeding \$3,000 through December 31, 2002;

Three percent on income in excess of \$3,000, but not in excess of \$5,000 through December 31, 2002;

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

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

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

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

Five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning January 1, 1990, through December 31, 2002;

Five percent on income not exceeding \$35,000 for taxable years beginning on and after January 1, 2003;

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

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

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

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

Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990, through December 31, 2002;

Five and three-quarters percent on income in excess of \$35,000 but not in excess of \$60,000 for taxable years beginning on and after January 1, 2003;

Six and one-half percent on income in excess of \$60,000 but not in excess of \$100,000 for taxable years beginning on and after January 1, 2003; and

Seven percent on income in excess of \$100,000 for taxable years beginning on and after January 1, 2003.

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the

036078456

SB1348

1/24/03 13:29

54 modifications specified in this section.

55 B. To the extent excluded from federal adjusted gross income, there shall be added:

56 1. Interest, less related expenses to the extent not deducted in determining federal income, on
57 obligations of any state other than Virginia, or of a political subdivision of any such other state unless
58 created by compact or agreement to which Virginia is a party;

59 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
60 taxable income, on obligations or securities of any authority, commission or instrumentality of the
61 United States, which the laws of the United States exempt from federal income tax but not from state
62 income taxes;

63 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

64 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum
65 distribution allowance and any amount excludable for federal income tax purposes which is excluded
66 from federal adjusted gross income solely by virtue of an individual's election to use the averaging
67 provisions under § 402 of the Internal Revenue Code;

68 5. through 7. [Repealed.]

69 8. For taxable years beginning on and after January 1, 1990, and before January 1, 1994, any
70 amount of self-employment tax deduction under § 164 (f) of the Internal Revenue Code; and

71 9. The amount required to be included in income for the purpose of computing the partial tax on
72 an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

73 C. To the extent included in federal adjusted gross income, there shall be subtracted:

74 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
75 and on obligations or securities of any authority, commission or instrumentality of the United States
76 to the extent exempt from state income taxes under the laws of the United States including, but not
77 limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of
78 federal taxes, interest on equipment purchase contracts, or interest on other normal business
79 transactions.

80 2. Income derived from obligations, or on the sale or exchange of obligations of this
81 Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

82 3. [Repealed.]

83 4. Benefits received under Title II of the Social Security Act and other benefits subject to federal
84 income taxation solely pursuant to § 86 of the Internal Revenue Code.

85 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
86 under § 22 of the Internal Revenue Code by a retiree under age sixty-five who qualified for such
87 retirement on the basis of permanent and total disability and who is a qualified individual as defined
88 in § 22 (b) (2) of the Internal Revenue Code; however, any person who claims a deduction under
89 subdivision 5 of subsection D of this section may not also claim a subtraction under this subdivision.

90 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as
91 defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a
92 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under
93 this subdivision.

94 5. The amount of any refund or credit for overpayment of income taxes imposed by the
95 Commonwealth or any other taxing jurisdiction.

96 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
97 deducted for federal purposes on account of the provisions of § 280C (a) of the Internal Revenue
98 Code.

99 7. Any amount included therein which is foreign source income as defined in § 58.1-302.

100 8. [Repealed.]

101 9. [Expired.]

102 10. Any amount included therein less than \$600 from a prize awarded by the State Lottery
103 Department.

104 11. The wages or salaries received by any person for active and inactive service in the National
105 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from
106 thirty-nine calendar days of such service or \$3,000, whichever amount is less; however, only those
107 persons in the ranks of O3 and below shall be entitled to the deductions specified herein.

108 12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for
109 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
110 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
111 perpetrators of crimes. This provision shall not apply to the following: an individual who is an
112 employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the
113 crime for which the reward was paid, or any person who is compensated for the investigation of
114 crimes or accidents.

115 13. [Repealed.]

116 14. (Expires for taxable years beginning on and after January 1, 2004.) The amount of any
117 qualified agricultural contribution as determined in § 58.1-322.2.

118 15. [Repealed.]

119 16. The amounts of self-employment tax required to be added in computing Virginia taxable
120 income for taxable years beginning on and after January 1, 1990, but before January 1, 1994, pursuant
121 to subdivision B 8 of this section, as follows:

122 a. For taxable years beginning on and after January 1, 1994, and before January 1, 1995, the
123 amount of self-employment tax added to federal adjusted gross income in taxable years beginning on
124 and after January 1, 1990, and before January 1, 1991;

125 b. For taxable years beginning on and after January 1, 1995, and before January 1, 1996, the
126 amount of self-employment tax added to federal adjusted gross income in taxable years beginning on
127 and after January 1, 1991, and before January 1, 1992;

128 c. For taxable years beginning on and after January 1, 1996, and before January 1, 1997, the
129 amount of self-employment tax added to federal adjusted gross income in taxable years beginning on
130 and after January 1, 1992, and before January 1, 1993;

131 d. For taxable years beginning on and after January 1, 1997, and before January 1, 1998, the
132 amount of self-employment tax added to federal adjusted gross income in taxable years beginning on
133 and after January 1, 1993, and before January 1, 1994, and any amount of self-employment tax
134 required to be added back for taxable years beginning on and after January 1, 1990, and before
135 January 1, 1994, which was not subtracted in those taxable years.

136 17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research
137 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
138 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be
139 available to partners, shareholders of S corporations, and members of limited liability companies to
140 the extent and in the same manner as other deductions may pass through to such partners,
141 shareholders, and members.

142 18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not
143 otherwise subtracted under this subsection, earned for any month during any part of which such
144 member performed military service in any part of the former Yugoslavia, including the air space
145 above such location or any waters subject to related naval operations, in support of Operation JOINT
146 ENDEAVOR as part of the NATO Peace Keeping Force. Such subtraction shall be available until the
147 taxpayer completes such service.

148 19. For taxable years beginning on and after January 1, 1996, any income received during the
149 taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by
150 § 401 of the Internal Revenue Code, an individual retirement account or annuity established under
151 § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal
152 Revenue Code, or any federal government retirement program, the contributions to which were
153 deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions
154 to such plan or program were subject to taxation under the income tax in another state.

155 20. For taxable years beginning on and after January 1, 1997, any income attributable to a
156 distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the
157 Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The
158 subtraction for any income attributable to a refund shall be limited to income attributable to a refund
159 in the event of a beneficiary's death, disability, or receipt of a scholarship.

160 21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the
161 extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted

162 under this section, earned by military personnel while serving by order of the President of the United
163 States with the consent of Congress in a combat zone or qualified hazardous duty area which is
164 treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

165 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
166 exchange of real property or the sale or exchange of an easement to real property which results in the
167 real property or the easement thereto being devoted to open-space use, as that term is defined in
168 § 58.1-3230, for a period of time not less than thirty years. To the extent a subtraction is taken in
169 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
170 shall be allowed for three years following the year in which the subtraction is taken.

171 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic
172 pay for military service personnel on extended active duty for periods in excess of ninety days;
173 however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's
174 military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is
175 equal to or exceeds \$30,000.

176 24. Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of
177 salary for each federal and state employee whose annual salary is \$15,000 or less.

178 25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

179 26. For taxable years beginning on and after January 1, 2001, any amount received as military
180 retirement income by an individual awarded the Congressional Medal of Honor.

181 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
182 result of (i) the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco
183 Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program,
184 pursuant to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers;
185 (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the
186 Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to
187 such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to
188 subdivision C 18 of § 58.1-402.

189 28. For taxable years beginning on and after January 1, 2000, items of income attributable to,
190 derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an
191 individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other
192 consideration received by a victim or target of Nazi persecution to compensate such individual for
193 performing labor against his will under the threat of death, during World War II and its prelude and
194 direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with
195 the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War
196 II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this
197 subdivision shall only apply to an individual who was the first recipient of such items of income and
198 who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of
199 such victim.

200 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution
201 by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act
202 or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct
203 aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi
204 persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during
205 World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include
206 any individual forced into labor against his will, under the threat of death, during World War II and
207 its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi
208 Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or
209 any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

210 D. In computing Virginia taxable income there shall be deducted from federal adjusted gross
211 income:

212 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
213 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by
214 the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and
215 deducted on such federal return and increased by an amount which, when added to the amount

216 deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the
217 state level for such purposes at a rate of eighteen cents per mile; or

218 b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987;
219 \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; ~~and~~ \$5,000 for
220 married persons (one-half of such amounts in the case of a married individual filing a separate return)
221 *through December 31, 2002; and* \$3,000 for single individuals for taxable years beginning on and
222 after January 1, 1989, *through December 31, 2002; and \$7,000 for married persons (one-half of such*
223 *amounts in the case of a married individual filing a separate return) for taxable years beginning on*
224 *and after January 1, 2003; and \$3,500 for single individuals for taxable years beginning on and after*
225 *January 1, 2003; provided that the taxpayer has not itemized deductions for the taxable year on his*
226 *federal income tax return. For purposes of this section, any person who may be claimed as a*
227 *dependent on another taxpayer's return for the taxable year may compute the deduction only with*
228 *respect to earned income.*

229 2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through
230 December 31, 1987, ~~and~~ \$800 for taxable years beginning on and after January 1, 1988, *through*
231 *December 31, 2002, and \$2,500 for taxable years beginning on and after January 1, 2003, for each*
232 *personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years*
233 *beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the*
234 *Internal Revenue Code shall be entitled to an additional personal exemption.*

235 b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through
236 December 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue
237 Code. The additional deduction for blind or aged taxpayers allowed under this subdivision and the
238 additional personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this
239 subsection shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable
240 year for federal income tax purposes.

241 3. A deduction equal to the amount of employment-related expenses upon which the federal credit
242 is based under § 21 of the Internal Revenue Code for expenses for household and dependent care
243 services necessary for gainful employment.

244 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home
245 under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim
246 the child as a personal exemption under § 151 of the Internal Revenue Code.

247 5. Effective for all taxable years beginning on or after January 1, 1996, *through December 31,*
248 *2002, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for*
249 *taxpayers age sixty-two through sixty-four.*

250 6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a
251 fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not
252 reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee
253 on his federal income tax return.

254 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or
255 contributed during the taxable year for a prepaid tuition contract or savings trust account entered into
256 with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23.
257 Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in
258 any taxable year shall be limited to \$2,000 per prepaid tuition contract or savings trust account. No
259 deduction shall be allowed pursuant to this section if such payments or contributions are deducted on
260 the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution
261 to a savings trust account exceeds \$2,000, the remainder may be carried forward and subtracted in
262 future taxable years until the purchase price or savings trust contribution has been fully deducted;
263 however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable
264 year exceed \$2,000 per contract or savings trust account. Notwithstanding the statute of limitations on
265 assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in
266 the taxable year or years in which distributions or refunds are made for any reason other than (i) to
267 pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the
268 beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the
269 term "purchaser" or "contributor" means the person shown as such on the records of the Virginia

270 College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of
 271 a prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax
 272 attributes associated with a prepaid tuition contract or savings trust account, including, but not limited
 273 to, carryover and recapture of deductions.

274 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after
 275 January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after
 276 January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

277 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has
 278 attained age seventy shall not be subject to the limitation that the amount of the deduction not exceed
 279 \$2,000 per prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall
 280 be allowed a deduction for the full amount paid for the contract or contributed to a savings trust
 281 account, less any amounts previously deducted. If a prepaid tuition contract was purchased by such
 282 taxpayer during taxable years beginning on or after January 1, 1996, but before January 1, 1998, such
 283 taxpayer may take the deduction for the full amount paid during such years, less any amounts
 284 previously deducted with respect to such payments, in taxable year 1999 or by filing an amended
 285 return for taxable year 1998.

286 8. For taxable years beginning on and after January 1, 2000, the total amount an individual
 287 actually contributed in funds to the Virginia Public School Construction Grants Program and Fund,
 288 established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not
 289 claimed a deduction for such amount on his federal income tax return.

290 9. For taxable years beginning on and after January 1, 1999, an amount equal to twenty percent of
 291 the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed
 292 pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education
 293 courses that are required as a condition of employment; however, the deduction provided by this
 294 subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii)
 295 the individual has not claimed a deduction for the payment of such tuition costs on his federal income
 296 tax return.

297 10. For taxable years beginning on and after January 1, 2000, the amount an individual pays
 298 annually in premiums for ~~long term~~ long-term health care insurance, provided the individual has not
 299 claimed a deduction for federal income tax purposes.

300 E. There shall be added to or subtracted from federal adjusted gross income, as the case may be,
 301 the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment
 302 determined under § 58.1-361.

303 F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as
 304 transitional modifications.

305 § 58.1-339.8. Income tax credit for low-income taxpayers.

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

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

310 "Poverty guidelines" means the poverty guidelines for the forty-eight contiguous states and the
 311 District of Columbia updated annually in the Federal Register by the U.S. Department of Health and
 312 Human Services under the authority of § 673 (2) of the Omnibus Budget Reconciliation Act of 1981.

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

314 B. For taxable years beginning on and after January 1, 2000, *through December 31, 2002*, any
 315 individual or persons filing a joint return whose family Virginia adjusted gross income does not
 316 exceed one hundred percent of the poverty guideline amount corresponding to a household of an
 317 equal number of persons as listed in the poverty guidelines published during such taxable year, shall
 318 be allowed a credit against the tax levied pursuant to § 58.1-320 in an amount equal to \$300 each for
 319 the individual, the individual's spouse, and any person claimed as a dependent on the individual's or
 320 married persons' income tax return for the taxable year. For any taxable year in which a husband and
 321 wife file separate Virginia income tax returns, the credit provided under this section shall be allowed
 322 against the tax for only one of such two tax returns. Additionally, the credit provided under this
 323 section shall not be allowed against such tax of a dependent of the individual or of married persons.

324 C. The amount of the credit provided pursuant to this section for any taxable year shall not exceed
325 the individual's or married persons' Virginia income tax liability.

326 D. Notwithstanding any other provision of this section, such credit shall not be allowed in any
327 taxable year in which the individual, the individual's spouse, or both, or any person claimed as a
328 dependent on such individual's or married persons' income tax return, claims one or any combination
329 of the following on his or their income tax return for such taxable year:

330 1. The subtraction under subdivision C 11 of § 58.1-322;

331 2. The subtraction under subdivision C 23 of § 58.1-322;

332 3. The subtraction under subdivision C 24 of § 58.1-322;

333 4. The deduction for the additional personal exemption for blind or aged taxpayers under
334 subdivision D 2 a of § 58.1-322; or

335 5. The deduction under subdivision D 5 of § 58.1-322.

336 § 58.1-339.11. Credit for sales taxes.

337 A. For taxable years beginning on and after January 1, 2003, there shall be allowed to the
338 resident individuals qualifying under subsection C, as a credit against the taxes imposed pursuant to
339 Article 2 (§ 58.1-320 et seq.) of Chapter 3 of this title, a sales tax credit for each personal exemption
340 claimed on the taxpayer's Virginia individual income tax return pursuant to subdivision D 2 a of
341 § 58.1-322. The credit shall not be allowable for the additional personal exemptions allowed for aged
342 and blind taxpayers.

343 B. The credit for each personal exemption claimed in the applicable taxable year shall equal \$100
344 if the taxpayer's federal adjusted gross income is \$20,000 or less, \$80 if his federal adjusted gross
345 income is greater than \$20,000 but less than or equal to \$22,000, \$60 if his federal adjusted gross
346 income is greater than \$22,000 but less than or equal to \$24,000, \$40 if his federal adjusted gross
347 income is greater than \$26,000 but less than or equal to \$28,000, \$20 if his federal adjusted gross
348 income is greater than \$28,000 but less than or equal to \$30,000, and \$0 if his federal adjusted gross
349 income is greater than \$30,000.

350 C. An individual shall qualify for the credit hereunder if he is a resident of this Commonwealth
351 and is not an inmate of a public institution.

352 D. No individual who may be claimed as a personal exemption on another individual's individual
353 income tax return shall be entitled to such sales tax credit. If such sales tax credit is claimed on more
354 than one return for the same individual, the Tax Commissioner is authorized to determine the
355 individual entitled to claim the credit.

356 E. Credits to minors shall be claimed by the parent or guardian. Credit to dependents other than
357 minors shall be claimed by the individual entitled to claim the dependents for income tax purposes.

358 F. Any tax credit not used for the taxable year may be carried over for credit against the
359 individual's income taxes in the 5 succeeding taxable years until the total credit amount is used.

360 G. The credits for sales taxes allowed pursuant to this section shall be claimed on individual
361 income tax returns. The Tax Commissioner may exercise any of the powers available to him under
362 this title to assure that a claimant under this section has actually incurred and paid sales tax.

363 H. Any person who willfully files a false or fraudulent return in order to receive a credit under
364 this section shall be guilty of a Class 1 misdemeanor.

365 § 58.1-339.12. Virginia earned income tax credit.

366 For taxable years beginning on or after January 1, 2003, an individual shall be entitled to a
367 credit against the tax levied pursuant to § 58.1-320 in an amount equal to 20 percent of the credit
368 allowed to the individual in the taxable year for federal individual income taxes pursuant to § 32 of
369 the Internal Revenue Code.

370 If the amount of the credit allowed under this section exceeds the individual's income tax liability
371 for the taxable year, the amount that exceeds such liability shall be refunded by the Tax
372 Commissioner to such individual and interest shall accrue on such refund as provided in subsection B
373 of § 58.1-1833 until paid by the Tax Commissioner.

374 § 58.1-400. Imposition of tax.

375 A tax at the rate of six percent is hereby annually imposed on the Virginia taxable income for
376 each taxable year of every corporation organized under the laws of the Commonwealth and every
377 foreign corporation having income from Virginia sources for taxable years beginning prior to January

378 1, 2003; and a tax at the rate of eight percent is hereby annually imposed on the Virginia taxable
379 income of such corporations for taxable years beginning on or after January 1, 2003.

380 § 58.1-602. Definitions.

381 As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

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

387 "Amplification, transmission and distribution equipment" means, but is not limited to, production,
388 distribution, and other equipment used to provide Internet-access services, such as computer and
389 communications equipment and software used for storing, processing and retrieving end-user
390 subscribers' requests.

391 "Amusement service" means the provision of amusement, entertainment, or recreation that is
392 consumed for noncommercial purposes. Amusement service includes membership in a private club or
393 organization that provides entertainment, recreational, sports, dining, or social facilities to its
394 members. Amusement service does not include the provision of educational or health services if
395 prescribed by a licensed practitioner of the healing arts for the primary purpose of education or
396 health maintenance or improvement.

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

399 "Consumed for noncommercial purposes" means any consumption the cost of which would not be
400 permitted as a business deduction or the basis of a business depreciation on the consumer's federal
401 income tax return.

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

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

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

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

419 "Gross sales" means the sum total of all retail sales of tangible personal property or services as
420 defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall
421 not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of
422 the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price
423 of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or
424 city under § 58.1-605 or § 58.1-606 or any tax imposed pursuant to § 58.1-604.4 or § 58.1-604.5.

425 "Import" and "imported" are words applicable to tangible personal property imported into this
426 Commonwealth from other states as well as from foreign countries, and "export" and "exported" are
427 words applicable to tangible personal property exported from this Commonwealth to other states as
428 well as to foreign countries.

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

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

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

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

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

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

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

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

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

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

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

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

483 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership
484 corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy,
485 receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit,

486 body politic or political subdivision, whether public or private, or quasi-public, and the plural of such
487 term shall mean the same as the singular.

488 *"Personal service" means any service, consumed for noncommercial purposes, when provided*
489 *through or by: alteration and garment repair; armored car; vehicle repair; battery and tire;*
490 *investment counseling; service charges of all financial institutions; barber and beauty; boat repair;*
491 *vehicle wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios;*
492 *dating services; dry cleaning; pressing, dyeing, and laundering; electrical and electronic repair and*
493 *installation; rental of tangible personal property, except mobile homes that are tangible personal*
494 *property; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug,*
495 *upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial*
496 *recreation; house and building moving; household appliance, television, and radio repair; jewelry and*
497 *watch repair; limousine service, including driver; machine operator, machine repair of all kinds;*
498 *motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business*
499 *machine repair; painting, papering, and interior decorating; parking facilities, pipe fitting and*
500 *plumbing; wood preparation; licensed executive search agencies; private employment agencies,*
501 *excluding services for placing a person in employment where the principal place of employment of*
502 *that person is to be located outside the state; sewage services for nonresidential commercial*
503 *operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation;*
504 *storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming*
505 *pool cleaning and maintenance; taxidermy services; telephone answering service; test laboratories,*
506 *including mobile testing laboratories and field testing by testing laboratories, and excluding tests on*
507 *humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish*
508 *baths, massage, and reducing salons, excluding services provided by certified massage therapists as*
509 *defined in § 54.1-3000; weighing; welding; well drilling; wrapping, packing, and packaging of*
510 *merchandise other than processed meat, fish, fowl, and vegetables; wrecking service; wrecker and*
511 *towing; pay television; campgrounds; carpet and upholstery cleaning; gun and camera repair;*
512 *janitorial and building maintenance or cleaning; lawn care, landscaping, and tree trimming and*
513 *removal; pet grooming; reflexology; security and detective services; tanning beds or salons; and*
514 *water conditioning and softening. Personal service does not include the provision of educational or*
515 *health services if prescribed by a licensed practitioner of the healing arts for the primary purpose of*
516 *education or health maintenance or improvement.*

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

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

526 The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or
527 charges for any room or rooms, lodgings, or accommodations furnished to transients for less than
528 ninety continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or
529 any other place in which rooms, lodging, space, or accommodations are regularly furnished to
530 transients for a consideration; and (ii) sales of tangible personal property to persons for resale when
531 because of the operation of the business, or its very nature, or the lack of a place of business in
532 which to display a certificate of registration, or the lack of a place of business in which to keep
533 records, or the lack of adequate records, or because such persons are minors or transients, or because
534 such persons are engaged in essentially service businesses, or for any other reason there is likelihood
535 that the Commonwealth will lose tax funds due to the difficulty of policing such business operations.
536 The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such
537 persons to collect the tax imposed by this chapter on the cost price of such tangible personal property
538 to such persons and may refuse to issue certificates of registration to such persons.

539 The term "transient" shall not include a purchaser of camping memberships, time-shares,

540 condominiums, or other similar contracts or interests that permit the use of, or constitute an interest
541 in, real estate, however created or sold and whether registered with this Commonwealth or not.
542 Further, a purchaser of a right or license which entitles the purchaser to use the amenities and
543 facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed
544 a transient; provided, however, that the term or time period involved is for seven years or more.

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

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

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

560 "Sales price" means the total amount for which tangible personal property or services are sold,
561 including any services that are a part of the sale, valued in money, whether paid in money or
562 otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by
563 the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of
564 materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not
565 include (i) any cash discount allowed and taken (ii) finance charges, carrying charges, service charges
566 or interest from credit extended on sales of tangible personal property under conditional sale contracts
567 or other conditional contracts providing for deferred payments of the purchase price, or (iii) separately
568 stated local property taxes collected. Where used articles are taken in trade, or in a series of trades as
569 a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be
570 paid on the net difference between the sales price of the new or used articles and the credit for the
571 used articles.

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

575 "Tangible personal property" means personal property which may be seen, weighed, measured, felt,
576 or touched, or is in any other manner perceptible to the senses. The term "tangible personal property"
577 shall not include stocks, bonds, notes, insurance or other obligations or securities.

578 "Use" means the exercise of any right or power over tangible personal property incident to the
579 ownership thereof, except that it does not include the sale at retail of that property in the regular
580 course of business. The term does not include the exercise of any right or power, including use,
581 distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery
582 outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor
583 from outside the Commonwealth via mail or telephone.

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

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

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

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

597 § 58.1-603. Imposition of sales tax.

598 There is hereby levied and imposed, in addition to all other taxes and fees of every kind now
 599 imposed by law, a license or privilege tax upon every person who engages in the business of selling
 600 at retail or distributing tangible personal property in this Commonwealth, or who *sells*, rents, or
 601 furnishes any of the things or services taxable under this chapter, or who stores for use or
 602 consumption in this Commonwealth any item or article of tangible personal property as defined in this
 603 chapter, or who leases or rents such property within this Commonwealth, in the amount of three and
 604 one-half percent:

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

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

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

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

614 5. Of the gross sales of any "personal service" or "amusement service" as those terms are defined
 615 in § 58.1-602, and of any other services ~~which~~ that are expressly stated as taxable within this chapter.

616 § 58.1-609.5. Service exemptions.

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

619 1. Professional, ~~or insurance, or personal service~~ transactions ~~which that~~ involve sales as
 620 inconsequential elements for which no separate charges are made; ~~services rendered by repairmen for~~
 621 ~~which a separate charge is made;~~ and services not involving an exchange of tangible personal property
 622 which provide access to or use of the international network of computer systems commonly known as
 623 the Internet and any other related electronic communication service.

624 2. ~~An amount separately charged for labor or services rendered in installing, applying, remodeling~~
 625 ~~or repairing property sold.~~

626 3. Transportation charges separately stated.

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

628 5. Charges for gift wrapping services performed by a nonprofit organization.

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

631 7. Custom programs as defined in § 58.1-602.

632 8. The sale or charges for any room or rooms, lodgings, or accommodations furnished to
 633 transients for more than ninety continuous days by any hotel, motel, inn, tourist camp, tourist cabin,
 634 camping grounds, club, or any other place in which rooms, lodging, space or accommodations are
 635 regularly furnished to transients for a consideration.

636 9. Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair
 637 or replacement parts and repair labor *for the benefit of a business*, shall be subject to tax upon
 638 one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a
 639 contract may purchase repair or replacement parts under a resale certificate of exemption. Warranty
 640 plans issued by an insurance company, which constitute insurance transactions, are subject to the
 641 provisions of subdivision 1 above.

642 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction
 643 Program.

644 A. Subject to the conditions of subsections D and E, the tax imposed by §§ 58.1-603 and 58.1-604
 645 on food purchased for human consumption shall be levied and distributed as follows:

646 1. From January 1, 2000, through March 31, 2001, the tax rate on such food shall be three percent
 647 of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from

648 the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638,
649 (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections
650 B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half percent
651 shall be used for general fund purposes.

652 2. From April 1, 2001, through March 31, 2002, the tax rate on such food shall be two and
653 one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i)
654 the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection
655 A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as
656 provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of
657 one percent shall be used for general fund purposes.

658 3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of
659 the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from
660 the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638,
661 (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections
662 B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be
663 used for general fund purposes.

664 4. On and after April 1, 2003, *through December 31, 2003*, the tax rate on such food shall be one
665 and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows:
666 (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in
667 subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be
668 distributed as provided in subsections B, C and D of § 58.1-638.

669 B. ~~The provisions of this section shall not affect the imposition of tax on food purchased for~~
670 ~~human consumption pursuant to §§ 58.1-605 and 58.1-606. On and after January 1, 2004, the tax~~
671 ~~imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not~~
672 ~~apply to food purchased for human consumption.~~

673 C. As used in this section, "food purchased for human consumption" has the same meaning as
674 "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations
675 adopted pursuant to that Act, except it shall not include seeds and plants which produce food for
676 human consumption. For the purpose of this section, "food purchased for human consumption" shall
677 not include food sold by any retail establishment where the gross receipts derived from the sale of
678 food prepared by such retail establishment for immediate consumption on or off the premises of the
679 retail establishment constitutes more than eighty percent of the total gross receipts of that retail
680 establishment, including but not limited to motor fuel purchases, regardless of whether such prepared
681 food is consumed on the premises of that retail establishment. For purposes of this section, "retail
682 establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is
683 required to apply for and receive a certificate of registration pursuant to § 58.1-613.

684 D. Notwithstanding the tax rates set forth in subsection A *and except as provided in subsection B*,
685 the rate of tax on sales of food purchased for human consumption for any twelve-month period
686 beginning on or after April 1, 2001, shall not be reduced below the rate then in effect for the
687 Commonwealth's current fiscal year if:

688 1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate
689 reduction is contemplated in subsection A do not exceed the official general fund revenue estimates
690 for such preceding fiscal year, as estimated in the most recently enacted and approved general
691 appropriation act, by at least one percent; or

692 2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have
693 occurred during the then current fiscal year.

694 E. ~~Except as provided in subsection B in regard to the elimination of sales and use taxes on~~
695 ~~food purchased for human consumption, if the tax rate on food purchased for human consumption~~
696 ~~remains the same for the period January 1, 2000, through March 31, 2001, and the subsequent~~
697 ~~twelve-month period beginning on April 1, 2001, or with respect to any consecutive twelve-month~~
698 ~~periods beginning on and after April 1, 2001, the tax rate on such food shall remain the same unless~~
699 ~~none of the conditions described in subsection D have occurred, in which event the tax rate on food~~
700 ~~purchased for human consumption for the immediately following twelve-month period shall be equal~~
701 ~~to the next lowest tax rate listed in subsection A.~~

702 F. There is hereby created on the books of the Comptroller a nonreverting fund entitled the Food
 703 Tax Reserve Fund which shall be used solely for the statutory purposes of the Food Tax Reduction
 704 Program as established by this section, and as may be provided for in the general appropriation act.
 705 For the purpose of the Comptroller's preliminary and final annual reports required by § 2.2-813, all
 706 balances remaining in the Fund on June 30 of each year shall be considered a portion of the fund
 707 balance of the general fund of the state treasury.

708 § 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.

709 A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons who are
 710 dealers, as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify
 711 under subsections B and C hereof.

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

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

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

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

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

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

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

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

732 8. *Provides any personal service or amusement service, as those terms are defined in § 58.1-602,*
 733 *for sale in the Commonwealth; or*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

786 **2. That the Tax Commissioner shall promulgate regulations pursuant to the Administrative**
787 **Process Act (§ 2.2-4000 et seq.) for purposes of implementing the provisions of this act.**

788 **3. That the provisions of this act amending §§ 58.1-602, 58.1-603, 58.1-609.5, and 58.1-612 shall**
789 **be effective January 1, 2004.**

Official Use By Clerks			
<p style="text-align: center;">Passed By The Senate</p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>		<p style="text-align: center;">Passed By The House of Delegates</p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>	
Date: _____		Date: _____	
_____ Clerk of the Senate		_____ Clerk of the House of Delegates	