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SENATE BILL NO. 452

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 27, 2010)

(Patron Prior to Substitute—Senator Whipple)

A BILL to amend and reenact §§ 58.1-602, 58.1-3819, 58.1-3822, 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, carried by reference in the Code of Virginia as § 58.1-3820, and Chapter 436 of the Acts of Assembly of 1990, as amended, 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 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, 58.1-3819, 58.1-3822, 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, carried by reference in the Code of Virginia as § 58.1-3820, and Chapter 436 of the Acts of Assembly of 1990, as amended, 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:

"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, lodging, 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 and charges a room charge to the customer. 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.

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

"Discount room charge" means the full amount charged by the accommodations provider to the accommodations intermediary for furnishing the accommodation.

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

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental

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60 of tangible personal property or for furnishing services, computed with the same deductions, where
61 applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use,
62 but not less frequently than monthly.

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

69 "Import" and "imported" are words applicable to tangible personal property imported into the
70 Commonwealth from other states as well as from foreign countries, and "export" and "exported" are
71 words applicable to tangible personal property exported from the Commonwealth to other states as well
72 as to foreign countries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

170 *In the case of the "retail sale" of any accommodations in which an accommodations intermediary*
 171 *facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary*
 172 *the retail sales and use taxes imposed in accordance with this chapter, computed on the discount room*
 173 *charge, and shall remit the same to the Department and shall be liable for the same, and (ii) the*
 174 *accommodations intermediary shall collect the retail sales and use taxes imposed in accordance with*
 175 *this chapter, computed on the room charge, and shall (a) remit the portion of such taxes that relate to*
 176 *the accommodations fee to the Department and shall be liable for the same, and (b) remit the portion of*
 177 *such taxes that relate to the discount room charge to the accommodations provider for purposes of*
 178 *payment of the tax under clause (i) and shall be liable for the same.*

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

183 *In any "retail sale" of any accommodations, the accommodations provider shall separately state the*
184 *amount of the tax on the bill, invoice, or similar documentation and shall add the tax to (i) the total*
185 *charges charged to the transient by the accommodations provider, or (ii) the discount room charge*
186 *billed to the accommodations intermediary, as applicable. In any "retail sale" of any accommodations,*
187 *the accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or*
188 *similar documentation and shall add the tax to the room charge; thereafter such tax shall be a debt*
189 *from the person renting the accommodations to the accommodations intermediary, recoverable at law in*
190 *the same manner as other debts.*

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

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

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

204 "Room charge" means the full retail price charged to the customer by the accommodations
205 intermediary for the use of the accommodations, including any accommodations fee before taxes.

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

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

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

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

243 "Storage" means any keeping or retention of tangible personal property for use, consumption or
244 distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of

245 business.

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

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

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

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

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

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

271 § 58.1-3818.8. Definitions.

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

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

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

277 "Accommodations intermediary" means any person, other than an accommodations provider, that
278 facilitates the sale of an accommodation and charges an accommodations intermediary room or space
279 charge to the customer. For purposes of this definition, "facilitates the sale" includes brokering,
280 coordinating, or in any other way arranging for the purchase of, or the right to use accommodations by
281 a customer.

282 "Accommodations intermediary room or space charge" means the full retail price charged to the
283 customer by the accommodations intermediary for the use of the accommodations, including any
284 accommodations fee before taxes.

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

288 "Discount charge" means the full amount charged by the accommodations provider to the
289 accommodations intermediary for furnishing the accommodation.

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

291 § 58.1-3819. Transient occupancy tax.

292 A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels,
293 boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous
294 occupancy for fewer than 30 consecutive days. *The tax shall be imposed on the total price paid by the*
295 *ultimate consumer for the use or possession of the room or space occupied in a retail sale.* Such tax
296 shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such
297 tax shall not exceed two percent of the amount of charge for the occupancy of any room or space
298 ~~occupied~~ *total price paid by the ultimate consumer for the use or possession of the room or space*
299 *occupied in a retail sale;* however, York County, Albemarle County, Nelson County, Mecklenburg
300 County, Gloucester County, Spotsylvania County, Stafford County, Loudoun County, Bedford County,
301 Cumberland County, Floyd County, King George County, Wise County, Botetourt County, Prince
302 Edward County, Rockbridge County, Caroline County, Dinwiddie County, Page County, Wythe County,
303 James City County, Franklin County, Tazewell County, Augusta County, Prince William County, Craig
304 County, Prince George County, Patrick County, Pulaski County, Halifax County, Montgomery County,
305 Carroll County, Northampton County, Amherst County, Giles County, Smyth County, and Greene

306 County may levy a transient occupancy tax not to exceed five percent, and any excess over two percent
307 shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as
308 determined after consultation with the local tourism industry organizations, including representatives of
309 lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging
310 properties, and generate tourism revenues in the locality. If any locality has enacted an additional
311 transient occupancy tax pursuant to subsection C of § 58.1-3823, then the governing body of the locality
312 shall be deemed to have complied with the requirement that it consult with local tourism industry
313 organizations, including lodging properties. If there are no local tourism industry organizations in the
314 locality, the governing body shall hold a public hearing prior to making any determination relating to
315 how to attract travelers to the locality and generate tourism revenues in the locality.

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

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

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

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

331 § 58.1-3820. Arlington County transient occupancy tax.

332 Notwithstanding the provisions of Chapter 443, as amended, of the Acts of Assembly of 1970 carried
333 by reference in the Code of Virginia as § 58.1-3819, beginning on and after July 1, 1977, Arlington
334 County is authorized to levy the transient occupancy tax permitted in § 58.1-3819 in an amount not to
335 exceed five percent of ~~the amount of the charge for the occupancy of any room or space occupied total~~
336 *price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail*
337 *sale*, provided that the county's local license tax as permitted in § 58.1-3703, as amended, on hotels,
338 motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for
339 continuous occupancy for fewer than thirty consecutive days, on and after January 1, 1978, shall not
340 exceed one percent of the gross receipts of such hotels, motels, boarding houses, travel campgrounds,
341 and other facilities offering guest rooms rented out for continuous occupancy for fewer than thirty
342 consecutive days. For purposes of this section, a corporation or partnership shall be deemed an
343 individual or group unless provided otherwise by local ordinance. For purposes of exercising the
344 authority granted by this section, those ordinances enacted by Arlington County on October 26, 1991,
345 and December 7, 1991, are validated as to their application, prospectively only, from the date of their
346 enactment. The remaining provisions of § 58.1-3819 shall apply mutatis mutandis to the provisions of
347 this section.

348 § 58.1-3821. Transient occupancy tax on certain rentals.

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

354 Such tax shall be in an amount and on such terms as the governing body, by ordinance, may
355 prescribe; however, in the County of Franklin such tax shall not exceed two percent of the ~~amount of~~
356 ~~charge for the occupancy of any room or space occupied total price paid by the ultimate consumer for~~
357 *the use or possession of the room or unit occupied in a retail sale* and in the County of Nelson such tax
358 shall not exceed 5% ~~percent of the amount of charge for the occupancy of any room or space occupied~~
359 *total price paid by the ultimate consumer for the use or possession of the room or unit occupied in a*
360 *retail sale*. Any revenue collected in Nelson County from that portion of the tax which exceeds 2%
361 *percent*, shall be designated and spent for promoting tourism, travel, or business that generates tourism
362 or travel in the county. Any county which imposes the tax authorized in this section may allow the
363 businesses collecting, accounting for, and remitting such ~~consumer transient occupancy~~ tax a
364 commission for such service in the form of a deduction from the tax remitted. The commission amount
365 shall be established by ordinance; however, the maximum commission payable shall not exceed five
366 percent of the amount of tax due and accounted for nor be less than a minimum of three percent of the
367 amount of tax due. No commission shall be allowed if the amount due was delinquent.

368 § 58.1-3822. Additional transient occupancy tax.

369 In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 and 58.1-3820,
370 beginning January 1, 1991, and ending January 1, 2012, Arlington County may impose an additional
371 transient occupancy tax not to exceed one-fourth of one percent of the amount of the charge for the
372 occupancy of any room or space occupied total price paid by the ultimate consumer for the use or
373 possession of any room or space occupied in a retail sale. The revenues collected from the additional
374 tax shall be designated and spent for the purpose of promoting tourism and business travel in the
375 county. Such designated funds shall be in addition to the county's previous budgeted amount for the
376 promotion of tourism and business travel.

377 § 58.1-3823. Additional transient occupancy tax for certain counties.

378 A. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through
379 58.1-3822, Hanover County, Chesterfield County and Henrico County may impose:

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

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

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

401 B. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through
402 58.1-3822, any county with the county manager plan of government may impose an additional transient
403 occupancy tax not to exceed two percent of the amount of the charge for the occupancy of any room or
404 space occupied total price paid by the ultimate consumer for the use or possession of any room or
405 space occupied in a retail sale, provided the county's governing body approves the construction of a
406 county conference center. The tax imposed hereunder shall not apply to rooms or spaces rented and
407 continuously occupied by the same individual or same group of individuals for 30 or more days. The
408 revenues collected from the additional tax shall be designated and spent for the design, construction,
409 debt payment, and operation of such conference center.

410 C. 1. In addition to such transient occupancy taxes as are authorized by §§ 58.1-3819 through
411 58.1-3822, the Counties of James City and York may impose an additional transient occupancy tax for
412 the use or possession of any overnight guest room in an amount not to exceed \$2 per room per night
413 for the occupancy of any overnight guest room. The revenues collected from the additional tax shall be
414 designated and expended solely for advertising the Historic Triangle area, which includes all of the City
415 of Williamsburg and the Counties of James City and York, as an overnight tourism destination by the
416 members of the Williamsburg Area Destination Marketing Committee of the Greater Williamsburg
417 Chamber and Tourism Alliance. The tax imposed by this subsection shall not apply to travel
418 campground sites or to rooms or spaces rented and continuously occupied by the same individual or
419 same group of individuals for 30 or more days.

420 2. The Williamsburg Area Destination Marketing Committee shall consist of the members as
421 provided in this subdivision. The governing bodies of the City of Williamsburg, the County of James
422 City, and the County of York shall each designate one of their members to serve as members of the
423 Williamsburg Area Destination Marketing Committee. These three members of the Committee shall have
424 two votes apiece.

425 Further, one member of the Committee shall be selected by the Board of Directors of the
426 Williamsburg Hotel and Motel Association; one member of the Committee shall be from The Colonial
427 Williamsburg Foundation and shall be selected by the Foundation; one member of the Committee shall
428 be an employee of Busch Gardens Europe/Water Country USA and shall be selected by Busch Gardens

429 Europe/Water Country USA; one member of the Committee shall be from the Jamestown-Yorktown
430 Foundation and shall be selected by the Foundation; one member of the Committee shall be selected by
431 the Executive Committee of the Greater Williamsburg Chamber and Tourism Alliance; and one member
432 of the Committee shall be the President and Chief Executive Officer of the Virginia Tourism Authority
433 who shall serve ex officio. Each of these six members of the Committee shall have one vote apiece. The
434 President of the Greater Williamsburg Chamber and Tourism Alliance shall serve ex officio with
435 nonvoting privileges unless chosen by the Executive Committee of the Greater Williamsburg Chamber
436 and Tourism Alliance to serve as its voting representative. The Executive Director of the Williamsburg
437 Hotel and Motel Association shall serve ex officio with nonvoting privileges unless chosen by the Board
438 of Directors of the Williamsburg Hotel and Motel Association to serve as its voting representative.

439 3. The Williamsburg Area Destination Marketing Committee shall maintain all authorities granted by
440 this section. The Greater Williamsburg Chamber and Tourism Alliance shall serve as the fiscal agent for
441 the Williamsburg Area Destination Marketing Committee with specific responsibilities to be defined in a
442 contract between such two entities. The contract shall include provisions to reimburse the Greater
443 Williamsburg Chamber and Tourism Alliance for annual audits and any other agreed-upon expenditures.
444 The Williamsburg Area Destination Marketing Committee shall also contract with the Greater
445 Williamsburg Chamber and Tourism Alliance to provide administrative support services as the entities
446 shall mutually agree.

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

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

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

455 § 58.1-3824. Additional transient occupancy tax in Fairfax County.

456 In addition to such transient occupancy taxes as are authorized by this chapter, beginning July 1,
457 2004, Fairfax County may impose an additional transient occupancy tax not to exceed two percent of
458 the amount of charge for the occupancy of any room or space occupied *total price paid by the ultimate*
459 *consumer for the use or possession of any room or space occupied in a retail sale*; provided that the
460 board of supervisors of the County appropriates the revenues collected from such tax as follows:

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

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

466 The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by
467 the same individual or same group of individuals for 30 or more days.

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

471 § 58.1-3825. Additional transient occupancy tax in Rockbridge County and the Cities of Lexington
472 and Buena Vista.

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

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

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

494 § 58.1-3825.2. Additional transient occupancy tax in Bath County.

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

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

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

506 2. One-half of such revenue shall be designated and spent solely for the design, operation,
507 construction, improvement, acquisition, and debt service for such expenses on debt incurred after June
508 30, 2009, of tourism facilities, historic sites, beautification projects, promotion of the arts, regional
509 tourism marketing efforts, capital costs related to travel and transportation including air service, public
510 parks and recreation, and information centers that attract travelers to the locality and generate tourism
511 revenues in the locality.

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

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

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

522 § 58.1-3826. Scope of transient occupancy tax.

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

526 B. *In the case of the retail sale of any accommodations made by an accommodations provider and in*
527 *which an accommodations intermediary does not facilitate the sale of the accommodations, the*
528 *accommodations provider shall collect the tax imposed pursuant to this article, computed on the total*
529 *price paid for the use or possession of the accommodations, and shall remit the same to the locality and*
530 *shall be liable for the same.*

531 *In the case of the retail sale of any accommodations in which an accommodations intermediary*
532 *facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary*
533 *the tax imposed pursuant to this article, computed on the discount charge, and shall remit the same to*
534 *the locality and shall be liable for the same, and (ii) the accommodations intermediary shall collect the*
535 *tax imposed pursuant to this article, computed on the accommodations intermediary room or space*
536 *charge, and shall (a) remit the portion of such tax that relates to the accommodations fee to the locality*
537 *and shall be liable for the same, and (b) remit the portion of such tax that relates to the discount*
538 *charge to the accommodations provider for purposes of payment of the tax under clause (i) and shall be*
539 *liable for the same.*

540 *In any retail sale of any accommodations, the accommodations provider shall separately state the*
541 *amount of the tax on the bill, invoice, or similar documentation and shall add the tax to (i) the total*
542 *price paid for the use or possession of the accommodations in cases in which an accommodations*
543 *intermediary does not facilitate the sale of the accommodations, or (ii) the discount charge billed to the*
544 *accommodations intermediary, as applicable. In any retail sale of any accommodations, the*
545 *accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar*
546 *documentation and shall add the tax to the accommodations intermediary room or space charge;*
547 *thereafter such tax shall be a debt from the person renting the accommodations to the accommodations*
548 *intermediary, recoverable at law in the same manner as other debts.*

549 § 58.1-3842. Combined transient occupancy and food and beverage tax.

550 A. Rappahannock County, by duly adopted ordinance, is hereby authorized to levy a tax ~~on~~
551 ~~occupancy~~ *for the use or possession of any room or space occupied* in a bed and breakfast establishment

552 on which the county is authorized to levy a transient occupancy tax under § 58.1-3819 and on food and
 553 beverages sold for human consumption within such establishment on which the county is authorized to
 554 levy a food and beverage tax under § 58.1-3833, when the charges for the ~~occupancy~~ *use or possession*
 555 of the room or space and for the sale of food and beverages are assessed in the aggregate and not
 556 separately stated. Such tax shall not exceed four percent of the total ~~amount charged for the occupancy~~
 557 ~~of the room or space occupied~~ *price paid by the ultimate consumer for the use or possession of the*
 558 *room or space occupied* and for the food and beverages *in a retail sale*. Such tax shall be in such
 559 amount and on such terms as the governing body may, by ordinance, prescribe. The tax shall be in
 560 addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6
 561 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing
 562 body. All taxes collected under the authority of this article shall be deemed to be held in trust for the
 563 county imposing the tax.

564 B. If a bed and breakfast establishment separately states charges for the ~~occupancy~~ *use or possession*
 565 of the room or space and for the sale of food and beverages, a transient occupancy tax levied under
 566 § 58.1-3819 and a food and beverage tax levied under § 58.1-3833 shall apply to such separately stated
 567 charges, as applicable.

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

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

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

581 § 58.1-3843. Scope of transient occupancy tax.

582 A. *As used in this section, unless the context requires a different meaning:*

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

585 *"Accommodations fee" means the same as such term is defined in § 58.1-3818.8.*

586 *"Accommodations intermediary" means the same as such term is defined in § 58.1-3818.8.*

587 *"Accommodations intermediary room or space charge" means the same as such term is defined in*
 588 *§ 58.1-3818.8.*

589 *"Accommodations provider" means the same as such term is defined in § 58.1-3818.8.*

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

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

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

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

601 *In the case of the retail sale of any accommodations in which an accommodations intermediary*
 602 *facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary*
 603 *the tax imposed pursuant to this article, computed on the discount charge, and shall remit the same to*
 604 *the locality and shall be liable for the same, and (ii) the accommodations intermediary shall collect the*
 605 *tax imposed pursuant to this article, computed on the accommodations intermediary room or space*
 606 *charge, and shall (a) remit the portion of such tax that relates to the accommodations fee to the locality*
 607 *and shall be liable for the same, and (b) remit the portion of such tax that relates to the discount*
 608 *charge to the accommodations provider for purposes of payment of the tax under clause (i) and shall be*
 609 *liable for the same.*

610 *In any retail sale of any accommodations, the accommodations provider shall separately state the*
 611 *amount of the tax on the bill, invoice, or similar documentation and shall add the tax to (i) the total*
 612 *price paid for the use or possession of the accommodations in cases in which an accommodations*
 613 *intermediary does not facilitate the sale of the accommodations, or (ii) the discount charge billed to the*

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