

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 50

**COMMONWEALTH OF VIRGINIA
RICHMOND
2004**

**JOINT SUBCOMMITTEE STUDYING THE
IMPACT OF COLLECTING REMOTE SALES TAXES
ON THE ECONOMY OF THE COMMONWEALTH**

MEMBERS

The Honorable Timothy D. Hugo, *Chairman*
The Honorable Emmett W. Hanger, Jr., *Vice-Chairman*
Mr. John Backus
The Honorable Charles J. Colgan
Mr. Steve DelBianco
Mr. William Frischling
Mr. Lee Goodman
The Honorable Lynwood W. Lewis, Jr.
Mr. Larry K. Pritchett
Mr. John W. Stewart
The Honorable R. Lee Ware, Jr.

EX-OFFICIO MEMBERS

The Honorable John M. Bennett, Secretary of Finance
The Honorable Eugene Huang, Secretary of Technology
The Honorable Michael J. Schewel, Secretary of Commerce and Trade

STAFF

DIVISION OF LEGISLATIVE SERVICES

David A. Rosenberg, *Senior Attorney*
Mark J. Vucci, *Senior Attorney*
Lynda Waddill, *Senior Operations Staff Assistant*

HOUSE COMMITTEE OPERATIONS

Bill Owen, *Committee Coordinator*

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INTRODUCTION

House Joint Resolution No. 176 (2004) established the Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth. The resolution created a joint subcommittee consisting of the fourteen members named in this report. The joint subcommittee was charged with "determin[ing] the amount of revenue the Commonwealth would generate and the impact on small businesses within the Commonwealth if the Commonwealth collected taxes on remote sales; and the ability to use the lack of a requirement to collect remote sales as a marketing tool."

The joint subcommittee met on August 16, October 4, October 19, and November 23. Following are the findings and recommendations adopted by the joint subcommittee.

Findings and Recommendations of the Remote Sales Tax Collection Study Committee

Pursuant to House Joint Resolution No. 176

Submitted by Steve DelBianco, Citizen Member, on October 20, 2004,
and adopted by the Joint Subcommittee on November 23, 2004

Background:

Virginia's General Assembly is considering whether the Commonwealth should support the creation of a multi-state tax compact designed to increase collection of sales and use taxes on interstate, or remote, retail sales. This compact is the product of the Streamlined Sales Tax Project, or SSTP. SSTP is supported by many states who have adopted, to varying degrees, the Streamlined Sales & Use Tax Agreement, or SSUTA. The SSTP has a clear mission: to simplify the burdens of collecting remote sales taxes in order to persuade the Congress to force sellers in every state to collect and remit sales tax to any state that complies with SSUTA.

Virginia is currently a "Participating State" in the SSTP. The SSTP has not convened its ultimate governing body, since no states have yet achieved compliance with the SSUTA. Instead, the project created an interim committee of "conforming states" whose laws and rules are substantially in conformance with SSUTA. Virginia continues to participate in SSTP and can influence SSUTA policies to benefit Virginia's economic interests.

In its authorizing legislation, this committee was charged to address three questions surrounding Virginia's consideration of whether to adopt the SSUTA:

In conducting its study, the joint subcommittee shall determine the amount of revenue the Commonwealth would generate and the impact on small businesses within the Commonwealth if the Commonwealth collected taxes on remote sales; and the ability to use the lack of a requirement to collect remote sales as a marketing tool.

Below are the Findings and Recommendations for this committee.

Findings:

Sales & Use Tax Compliance:

The scope of sales and use tax compliance today – or how much additional compliance might be achieved through a national, mandatory system – must be carefully analyzed. Particularly in the case of e-commerce, there are important distinctions that help determine whether Virginia should transform its tax laws, surrender some control over its tax policy to an interstate governing body of un-elected tax administrators, and potentially lose competitive advantages to reach for additional sales tax revenues.

1. According to the widely-cited July 2004 study by the University of Tennessee, 1.3 trillion dollars of e-commerce was conducted in the United States in 2003. 93% of this e-commerce was in business-to-business (B2B) transactions. Of this B2B

e-commerce, the study reports that 43% is exempt from sales tax, and 73% of the rest *is already fully taxed* since businesses already have a high compliance rate for use taxes. The bottom line here is that 9 of every 10 dollars in e-commerce is business-to-business, where there is little in incremental collections to justify a dramatic transformation of Virginia's sales tax system.

2. The remaining one-tenth of e-commerce is business-to-consumer (B2C) transactions. The latest University of Tennessee study estimates that 20% of B2C e-commerce is tax-exempt (e.g., Virginia does not impose sales tax online services, content, and software). The study concludes that sales tax is already collected on 40% of the taxable B2C sales, largely by online retailers who already have to collect wherever they also have a physical presence (also by businesses like Dell, who voluntarily collect Virginia sales taxes so they can sell computers to the Commonwealth). The University of Tennessee figure agrees with an informal survey of 300 major online/catalog retailers conducted by the Virginia Tax Department, where approximately 40% of the major remote retailers were already collecting Virginia sales tax on their sales to Virginia consumers.

The National Retail Federation and Virginia Retail Merchants Association presented survey results from Forrester and shop.org that showed dramatic growth in this "multi-channel" variant of online retail. Nearly 75% of online sales in 2003 were by retailers with both online and physical presence in multiple states. The growth in multi-channel retail reveals the evolution of hybrid business models in response to consumer demand for in-store pickups and returns. These online sellers must therefore collect sales tax for any state where they have a physical presence—whether or not SSUTA is ever enacted.

3. Of all e-commerce in 2003, the Tennessee study estimates that just 3% is potentially taxable but not yet collected. Of that amount, sales by small retailers would not be subject to collection requirements under federal SSUTA legislation currently pending in Congress. (i.e., businesses that sell less than \$5 million annually in remote, taxable sales qualify for a small business exemption). Thus, were Virginia to change its sales tax system in an effort to tap interstate B2C electronic commerce, it would do so to reach a small fraction of e-commerce. This conclusion must be considered in any cost-benefit analysis.
4. Virginia Department of Tax Administration representatives presented data that may indicate compliance gaps in payment of use tax by Virginia businesses. Compliance by Virginia's businesses appears to be much lower than national compliance averages given by the University of Tennessee and others. Considering that B2B remote sales are ten times as large as B2C remote sales, Virginia could generate significant additional revenue with greater use tax compliance by businesses, notwithstanding a federal mandate for the SSUTA.

Costs & Burdens Of Sales Tax Collections Imposed Upon Virginia Businesses:

1. The National Retail Federation and the Direct Marketing Association endorsed the results of a study, "*Masters of Complexity and Bearers of Great Burden: The*

Sales Tax System And Compliance Cost for Multistate Retailers” by Ernst & Young (R. Cline, T. Neubig, 1999) The E&Y study estimates collection and remittance costs borne by retailers who collect sales tax for single and multiple states.

2. The E&Y study showed that small businesses collecting for one state incur a compliance cost equal to 7% of sales taxes collected. For large retailers, the cost of compliance is 1% of each dollar of tax collected.
3. Virginia currently compensates small retailers (\$0-\$62,500 in monthly sales) at an effective rate of 2.4% of each dollar of sales tax collected (4% vendor discount calculated on the first 3% of Virginia’s 5% sales tax rate). For large retailers (\$208,001 in monthly sales), Virginia compensates at an effective rate of 1.2% of tax collected (2% vendor discount calculated on the first 3% of Virginia’s 5% sales tax rate). Va. Code § 58.1-622.
4. The E&Y study estimated that small businesses, if forced to collect for all 46 sales tax states, would incur collection costs reaching 87% of sales taxes collected. For large retailers, the cost would be 14% of each dollar of tax collected.
5. The National Retail Federation advocated that states should compensate sellers for 100% of all actual costs incurred to collect and remit sales taxes.
6. According to the Direct Marketing Association, Virginia electronics retailer Crutchfield, which operates in several Virginia communities and sells via the Internet and catalogues, commented that costs of multi-state tax collection would be so expensive as to endanger their business model. This conclusion was shared by a small online and catalogue retailer in Lexington, Virginia, Virginia Born & Bred. Committee member Bill Frischling echoed those same concerns with respect to his own online consumer electronics business.
7. Virginia’s current sales tax regime is an origin-based system. SSUTA, however, requires destination-based sourcing, even for in-state shipments. This would impose new tax and administrative costs and burdens on Virginia retailers shipping to Virginia customers. This will have distinct impacts upon retailers of large items typically shipped to the customer’s location, including furniture, appliances and building supplies. Destination sourcing would add significant complexity to Virginia’s relatively simple sales tax system. Destination sourcing also would cause transfer of tax revenues from jurisdictions where shippers are located (e.g., Greenfronts Furniture in Farmville, Virginia) to jurisdictions where customers are located.
8. In the 2004 legislative session, the Virginia General Assembly considered adopting SSUTA *without* the destination-based sourcing, but that is not in compliance with the Agreement and would therefore not meet requirements of the proposed federal mandate legislation.
9. One proposal under consideration is to require origin-based taxation for intrastate sales and destination-based taxation for interstate sales. Such a dual system would discriminate against interstate sellers by requiring them to operate two

different compliance and collection schemes. Such a dual system also would introduce confusion into a multi-state tax collection system, particularly in the case of multi-channel retailers and transactions conducted by a mix of online and physical contacts.

10. Virginia's current sales tax system is one of the simplest in the nation: centralized state administration, one rate (5%) in all localities, a uniform tax base in all localities, origin-based sourcing, and broad exemptions for all online downloads of software, content, data, Internet access and services. Virginia's sales tax system was characterized as significantly more simple and uniform than the system proposed under SSUTA (multiple rates per state, multiple audits, destination-based sourcing, and taxability of online downloads and services). In short, the SSUTA system introduces additional complexity and burdens for Virginia businesses selling to customers outside Virginia.
11. Under proposed federal SSUTA legislation, retailers collecting and remitting Virginia sales tax would be compensated for tax processing costs for two years, although it is unlikely that significant costs of systems integration would be reimbursed.

Increase in Taxes Collected from Virginia Consumers:

All agree that should SSUTA become a mandatory system by act of Congress, Virginia's participation in the SSUTA would result in increased sales tax collections from Virginia consumers. Precisely how much is not known. Estimates vary widely.

1. An updated report from the University of Tennessee forecast that Virginia consumers would pay an additional \$250 million in sales taxes collected under SSUTA (a 40% reduction from an earlier forecast from the same University of Tennessee researchers).
2. A report from the Direct Marketing Association forecasts that Virginia would realize increased collections of less than \$50 million under the SSUTA.
3. The National Retail Federation advocated a reduction in Virginia's overall sales tax rate of 5% to correspond proportionately to any increase in sales tax collections under SSUTA. In other words, Virginia should not adopt the SSUTA in order to increase taxes paid by Virginia retail consumers. Moreover, the Administration has represented that a sales tax increase adopted earlier this year, when combined with other tax increases and revenue surpluses generated by a recovering economy, was adequate to meet Virginia's spending needs. Since any increase in sales tax collections under a mandatory SSUTA system would mean Virginia consumers would be paying increased taxes, the Commonwealth would have to reduce its current sales tax rate in order to make the SSUTA a revenue-neutral proposition.
4. Any increase in tax collections would be reduced by reimbursements credited to retailers collecting the tax. At a minimum, any amounts collected would be reduced by Virginia's current effective reimbursement rates of 2.4% for small retailers and 1.2% for large retailers.

Preserving Virginia's Competitive Economic Position:

1. A study by the Progress & Freedom Foundation concluded that Virginia would gain significant economic development advantages by staying out of SSUTA, assuming that federal legislation authorizes a voluntary state compact instead of a national mandate imposed upon all states.
2. At the annual meeting of the National Conference of State Legislatures (NCSL) in July 2004, New Hampshire offered a voluntary participation amendment to SSUTA, but the amendment was overwhelmingly defeated by NCSL's sales tax task force. Both of the proposed federal SSUTA bills require mandatory collection by sellers in every state, even in states that elect not to confirm their laws to SSUTA.
3. Over the past decade, Virginia has competed vigorously to attract technology-based companies, particularly software providers, Internet access providers, and online content and service providers. One such policy was to exempt services, both on Main Street and online, from sales taxes. However, under SSUTA, Virginia services and online software and content would be taxable by other states. The Northern Virginia Technology Council believes that this tax policy is significant to maintaining Virginia's competitiveness in the technology sector. Thus, SSUTA would compromise a significant policy Virginia has used to build its technology industry, and expose Virginia's technology sector to new sales tax collection burdens, increasing their cost of doing business, and increasing the cost of Virginia exports of online services, software and content.
4. Virginia also implemented policies to incubate small online businesses and entrepreneurs. Among the policies cited is the Commonwealth's relatively simplified sales tax system. The Direct Marketing Association (DMA) reported that Virginia's tax policies have been successful in promoting a vibrant direct merchant sector in Virginia. The Virginia Employment Commission estimates that Virginia's retail businesses have 400,000 direct employees, although the DMA demonstrated how secondary employment in businesses that serve direct market retailers brings the total employment in Virginia to over 400,000, including printing businesses from Lynchburg (e.g., Donnelly) and Southwest Virginia. Moreover, many direct merchants locate in Virginia and assume its sales tax collection responsibilities because of its attractive tax policies.
5. As for compensating businesses that locate in Virginia and assume the burdens of sales tax collection in Virginia, Virginia has implemented several policies to make Virginia an attractive state to locate a retail establishment. According to the Virginia Employment Commission, Virginia is home to 400,000 retail employees. Virginia provides retail establishments significant resources and benefits: education, fire, police, and transportation services; direct grants and significant tax breaks to locate or expand here; pro-business policies such as right-to-work, low corporate tax rates, and a simplified sales tax system.
6. A mandatory SSUTA interstate sales tax collection system would reduce significant competitive advantages that Virginia enjoys relative to other states. Virginia would be a net exporter of tax revenues to other states, and Virginia would become a net importer of tax collection burden compared to other states.

Important Unknowns About SSUTA:

SSUTA is a new concept with no demonstrated success at simplifying sales tax systems that the Supreme Court has ruled to be an unreasonable burden on interstate commerce. Critical facts and data needed for a comprehensive analysis of SSUTA's benefits and costs are not yet known. SSTP proponents should carry the burden of persuasion to show that SSUTA is in Virginia's best economic interests, and the following facts and data should be known before the policy is adopted.

1. The actual cost of all collection, remittance and compliance costs for all vendors under a mandatory SSUTA is unknown. The SSTP is preparing a study of current collection costs, but has not planned a study of collection and compliance costs under SSUTA.
2. The National Retail Federation explained that a significant cost and administrative burden which is not addressed by the SSUTA is the burden of integrating new tax-compliance software into the existing business systems of every vendor in America. While it may be trivial to perform a database lookup of zip code and product codes, the difficult part is implementing the lookup in sales systems and back-office software that handles shipments, inventories, partial orders, returns, exchanges, etc. Not enough is known about the initial and ongoing maintenance costs for systems integration, particularly for small businesses with proprietary or customized systems.
3. The Direct Marketing Association explained that no interstate tax collection software has thus far been offered by SSTP proponents. While the SSTP conducted a limited software pilot among several states and several retailers, there has been no public demonstration of a successful implementation.
4. It is unknown how much additional sales taxes Virginia consumers would pay under a mandatory SSUTA system. This is a fundamental fact that should be communicated to Virginia consumers before considering adoption of SSUTA.
5. It is unknown to what extent or for how long retailers would be reimbursed for tax collection costs under the SSUTA.
6. Not enough is known about the impact of destination-based sourcing upon re-allocation of tax revenue among Virginia's localities. Several SSUTA states delayed implementation of sourcing rules when vendors began to confront significant collection burdens and when cities realized they would lose tax revenue to surrounding jurisdictions.
7. It is not known whether the SSUTA is workable (or Constitutional) if states elect to use "dual" sourcing: origin-based for intrastate sales, and destination-based for interstate sales.

Recommendations:

1. Virginia's Department of Taxation should sponsor a study of "Costs and Revenue Re-allocation Arising from Destination-Based Sourcing". The study should be conducted by an independent vendor and should involve localities potentially affected by sourcing

changes. Funding should be adequate to include a survey of merchants potentially affected by sourcing changes. The Department of Taxation has requested that the General Assembly set the timing of these studies so that they can be done when the Legislature is not in session.

2. Virginia's Department of Taxation should sponsor a "True Cost of Collection" study by an independent vendor, asking Virginia's retail industry to assess their actual costs of sales tax compliance for retailers of all sizes and types. Virginia should then adjust its vendor reimbursements to cover substantially all actual and reasonable sales tax compliance costs.
3. Virginia should continue to monitor and influence the SSUTA debate through its multiple roles—as a Participating State in the Streamlined Sales Tax Project, Governor Warner's chairmanship of the National Governors Association, and many Virginia Legislators who participate in the National Conference of State Legislatures, including Senator Hanger's leadership on NCSL's task force on remote sales taxation.

Virginia representatives to these organizations should advance the Commonwealth's interest in the SSUTA and in federal legislation by advocating the following policies:

- origin-based sourcing on all sales, with no discrimination between online and offline retailers or between interstate and intrastate commerce;
 - a broad prohibition against taxation of electronically delivered services, software downloads, online content, and Internet access services;
 - explicit protections for small businesses from disproportionate collection burdens;
 - compensation for all retailers to cover substantially all reasonable costs of collection as a condition of any state's participation;
 - provisions for transparency in consumer tax burdens effected by any mandatory SSUTA collections (i.e., tell taxpayers about the additional sales taxes they'll pay under SSUTA, and the corresponding reduction in sales tax rates to maintain current revenues);
 - explicit protections against multiple sales tax audits;
 - explicit protections for consumer privacy.
4. Virginia representatives to these organizations and Virginia's federal delegation should push for changes to federal SSUTA legislation *to allow a voluntary interstate tax collection compact instead of a national mandate* in order to protect Virginia's tax sovereignty and ability to compete for economic development prospects.
 5. It is not at all clear that the benefits of SSUTA justify the collection costs and lost opportunity to use tax policy to compete for economic development for Virginia. At this time, there is no compelling reason for Virginia to adopt SSUTA, and there are too many unanswered questions regarding collection costs and ameliorative provisions in SSUTA and proposed federal legislation. Therefore, Virginia's General Assembly should not consider adoption of SSUTA in its 2004-2005 legislative session.

2004 SESSION

ENROLLED

HOUSE JOINT RESOLUTION NO. 176

Establishing a joint subcommittee to study the impact of collecting remote sales taxes on the economy of the Commonwealth. Report.

Agreed to by the House of Delegates, March 10, 2004
Agreed to by the Senate, March 9, 2004

WHEREAS, to simplify and facilitate taxation of interstate sales, there has been an ongoing study of the sales and use tax at the national level (known as the Streamlined Sales Tax Project) for the past several years; and

WHEREAS, an agreement among the states participating in the Project was finalized in November of 2002; and

WHEREAS, Virginia has participated in the Project only since June of 2002; and

WHEREAS, the impact on the Commonwealth's economy, especially small businesses, must be determined to avoid harming its economy; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the impact of collecting remote sales taxes on the economy of the Commonwealth. The joint subcommittee shall consist of 14 members that include five legislative members, six nonlegislative citizen members, and three ex officio members. Members shall be appointed as follows: three members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Rules; four nonlegislative citizen members with experience in e-commerce and Internet sales to be appointed by the Speaker of the House of Delegates; two nonlegislative citizen members with experience in accounting and collecting and remitting sales tax in multiple jurisdictions to be appointed by the Senate Committee on Rules; and the Secretaries of Finance, Technology, and Commerce and Trade to serve ex officio with nonvoting privileges. Nonlegislative citizen members shall be citizens of the Commonwealth of Virginia. The joint subcommittee shall elect a chairman and vice chairman from among its membership, who shall be members of the General Assembly.

In conducting its study, the joint subcommittee shall determine the amount of revenue the Commonwealth would generate and the impact on small businesses within the Commonwealth if the Commonwealth collected taxes on remote sales; and the ability to use the lack of a requirement to collect remote sales as a marketing tool.

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. Technical assistance shall be provided by the Department of Taxation and the Virginia Economic Development Partnership. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request.

The joint subcommittee shall be limited to four meetings for the 2004 interim, and the direct costs of this study shall not exceed \$7,400 without approval as set out in this resolution. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the House members or a majority of the Senate members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

The joint subcommittee shall complete its meetings by November 30, 2004, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2005 Regular Session of the General Assembly for each year. The executive summary shall state whether the joint subcommittee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the 2004 interim.

ENROLLED

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**STREAMLINED SALES AND
USE TAX AGREEMENT**

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Adopted November 12, 2002

6

(As amended November 19, 2003)

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1 **ARTICLE I**
2 **PURPOSE AND PRINCIPLE**
3

4 **Section 101: TITLE**

5 This multistate Agreement shall be referred to, cited, and known as the Streamlined Sales and
6 Use Tax Agreement.
7

8 **Section 102: FUNDAMENTAL PURPOSE**

9 It is the purpose of this Agreement to simplify and modernize sales and use tax administration in
10 the member states in order to substantially reduce the burden of tax compliance. The Agreement
11 focuses on improving sales and use tax administration systems for all sellers and for all types of
12 commerce through all of the following:

- 13 A. State level administration of sales and use tax collections.
 - 14 B. Uniformity in the state and local tax bases.
 - 15 C. Uniformity of major tax base definitions.
 - 16 D. Central, electronic registration system for all member states.
 - 17 E. Simplification of state and local tax rates.
 - 18 F. Uniform sourcing rules for all taxable transactions.
 - 19 G. Simplified administration of exemptions.
 - 20 H. Simplified tax returns.
 - 21 I. Simplification of tax remittances.
 - 22 J. Protection of consumer privacy.
- 23

24 **Section 103: TAXING AUTHORITY PRESERVED**

25 This Agreement shall not be construed as intending to influence a member state to impose a tax
26 on or provide an exemption from tax for any item or service. However, if a member state
27 chooses to tax an item or exempt an item from tax, that state shall adhere to the provisions
28 concerning definitions as set out in Article III of this Agreement.
29

1 **Section 104: DEFINED TERMS**

2 This Agreement defines terms for use within the Agreement and for application in the sales and
3 use tax laws of the member states. The definition of a term is not intended to influence the
4 interpretation or application of that term with respect to other tax types.

5

6 An alphabetical list of all the terms defined in the Agreement and their location in the Agreement
7 is found in Appendix B of this Agreement, the Index of Definitions. Terms defined for use
8 within this Agreement are set out in Article II of the Agreement. Many of the uniform definitions
9 for application in the sales and use tax laws of the member states are set out in Appendix C of
10 this Agreement, the Library of Definitions. Definitions that are not set out in Appendix C are
11 defined when applied in a particular section of the Agreement and are set out in that section of
12 the Agreement. The appendices have the same effect as the Articles in the Agreement.

13

14 **Section 105: TREATMENT OF VENDING MACHINES**

15 The provisions of the Agreement do not apply to vending machines sales. The Agreement does
16 not restrict how a member state taxes vending machine sales.

1 **ARTICLE II**
2 **DEFINITIONS**
3

4 The following definitions apply in this Agreement:

5 **Section 201: AGENT**

6 A person appointed by a seller to represent the seller before the member states.

7 **Section 202: CERTIFIED AUTOMATED SYSTEM (CAS)**

8 Software certified under the Agreement to calculate the tax imposed by each jurisdiction on a
9 transaction, determine the amount of tax to remit to the appropriate state, and maintain a record
10 of the transaction.

11 **Section 203: CERTIFIED SERVICE PROVIDER (CSP)**

12 An agent certified under the Agreement to perform all the seller's sales and use tax functions,
13 other than the seller's obligation to remit tax on its own purchases.

14 **Section 204: ENTITY-BASED EXEMPTION**

15 An exemption based on who purchases the product or who sells the product.

16 **Section 205: MODEL 1 SELLER**

17 A seller that has selected a CSP as its agent to perform all the seller's sales and use tax functions,
18 other than the seller's obligation to remit tax on its own purchases.

19 **Section 206: MODEL 2 SELLER**

20 A seller that has selected a CAS to perform part of its sales and use tax functions, but retains
21 responsibility for remitting the tax.

22 **Section 207: MODEL 3 SELLER**

23 A seller that has sales in at least five member states, has total annual sales revenue of at least five
24 hundred million dollars, has a proprietary system that calculates the amount of tax due each
25 jurisdiction, and has entered into a performance agreement with the member states that
26 establishes a tax performance standard for the seller. As used in this definition, a seller includes
27 an affiliated group of sellers using the same proprietary system.

28 **Section 208: PERSON**

29 An individual, trust, estate, fiduciary, partnership, limited liability company, limited liability
30 partnership, corporation, or any other legal entity.

1 **Section 209: PRODUCT-BASED EXEMPTION**

2 An exemption based on the description of the product and not based on who purchases the
3 product or how the purchaser intends to use the product.

4 **Section 210: PURCHASER**

5 A person to whom a sale of personal property is made or to whom a service is furnished.

6 **Section 211: REGISTERED UNDER THIS AGREEMENT**

7 Registration by a seller with the member states under the central registration system provided in
8 Article IV of this Agreement.

9 **Section 212: SELLER**

10 A person making sales, leases, or rentals of personal property or services.

11 **Section 213: STATE**

12 Any state of the United States and the District of Columbia.

13 **Section 214: USE-BASED EXEMPTION**

14 An exemption based on the purchaser's use of the product.

1 **ARTICLE III**

2 **REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE**

3
4
5 **Section 301: STATE LEVEL ADMINISTRATION**

6 Each member state shall provide state level administration of sales and use taxes. The state level
7 administration may be performed by a member state's Tax Commission, Department of Revenue,
8 or any other single entity designated by state law. Sellers are only required to register with, file
9 returns with, and remit funds to the state level authority. Each member state shall provide for
10 collection of any local taxes and distribution of them to the appropriate taxing jurisdictions.

11 Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the
12 sellers registered under the Agreement for that state's tax and the tax of its local jurisdictions,
13 and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered
14 under the Agreement.

15
16 **Section 302: STATE AND LOCAL TAX BASES**

17 Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax,
18 all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the
19 tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited
20 by federal law. This section does not apply to sales or use taxes levied on the retail sale or
21 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile
22 homes.

23
24 **Section 303: SELLER REGISTRATION**

25 Each member state shall participate in an online sales and use tax registration system in
26 cooperation with the other member states. Under this system:

- 27 A. A seller registering under the Agreement is registered in each of the member states.
28 B. The member states agree not to require the payment of any registration fees or other
29 charges for a seller to register in a state in which the seller has no legal requirement to
30 register.

- 1 C. A written signature from the seller is not required.
- 2 D. An agent may register a seller under uniform procedures adopted by the member states.
- 3 E. A seller may cancel its registration under the system at any time under uniform
- 4 procedures adopted by the governing board. Cancellation does not relieve the seller of its
- 5 liability for remitting to the proper states any taxes collected.

6

7 **Section 304: NOTICE FOR STATE TAX CHANGES**

- 8 A. Each member state shall lessen the difficulties faced by sellers when there is a change in
- 9 a state sales or use tax rate or base by making a reasonable effort to do all of the
- 10 following:
- 11 1. Provide sellers with as much advance notice as practicable of a rate change.
- 12 2. Limit the effective date of a rate change to the first day of a calendar quarter.
- 13 3. Notify sellers of legislative changes in the tax base and amendments to sales and use
- 14 tax rules and regulations.
- 15 B. Failure of a seller to receive notice or failure of a member state to provide notice or limit
- 16 the effective date of a rate change shall not relieve the seller of its obligation to collect
- 17 sales or use taxes for that member state.

18

19 **Section 305: LOCAL RATE AND BOUNDARY CHANGES**

20 Each member state that has local jurisdictions that levy a sales or use tax shall:

- 21 A. Provide that local rate changes will be effective only on the first day of a calendar
- 22 quarter after a minimum of sixty days' notice to sellers.
- 23 B. Apply local sales tax rate changes to purchases from printed catalogs wherein the
- 24 purchaser computed the tax based upon local tax rates published in the catalog only on
- 25 the first day of a calendar quarter after a minimum of one hundred twenty days' notice to
- 26 sellers.
- 27 C. For sales and use tax purposes only, apply local jurisdiction boundary changes only on
- 28 the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

- 1 D. Provide and maintain a database that describes boundary changes for all taxing
2 jurisdictions. This database shall include a description of the change and the effective
3 date of the change for sales and use tax purposes.
- 4 E. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions
5 levying taxes within the state. For the identification of states, counties, cities, and
6 parishes, codes corresponding to the rates must be provided according to Federal
7 Information Processing Standards (FIPS) as developed by the National Institute of
8 Standards and Technology. For the identification of all other jurisdictions, codes
9 corresponding to the rates must be in the format determined by the governing board.
- 10 F. Provide and maintain a database that assigns each five digit and nine digit zip code
11 within a member state to the proper tax rates and jurisdictions. The state must apply the
12 lowest combined tax rate imposed in the zip code area if the area includes more than one
13 tax rate in any level of taxing jurisdictions. If a nine digit zip code designation is not
14 available for a street address or if a seller is unable to determine the nine digit zip code
15 designation of a purchaser after exercising due diligence to determine the designation,
16 the seller may apply the rate for the five digit zip code area. For the purposes of this
17 section, there is a rebuttable presumption that a seller has exercised due diligence if the
18 seller has attempted to determine the nine digit zip code designation by utilizing
19 software approved by the governing board that makes this designation from the street
20 address and the five digit zip code of the purchaser.
- 21 G. Participate with other member states in the development of an address-based system for
22 assigning taxing jurisdictions. The system must meet the requirements developed
23 pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sec. 119).
24 The governing board may allow a member state to require sellers that register under this
25 Agreement to use an address-based system provided by that member state. If any
26 member state develops an address-based assignment system pursuant to the Mobile
27 Telecommunications Sourcing Act, a seller may use that system in place of the system
28 provided for in subsection (F) of this section.
- 29

1 **Section 306: RELIEF FROM CERTAIN LIABILITY**

2 Each member state shall relieve sellers and CSPs from liability to the member state and local
3 jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting
4 from the seller or CSP relying on erroneous data provided by a member state on tax rates,
5 boundaries, or taxing jurisdiction assignments. A member state that provides an address-based
6 system for assigning taxing jurisdictions pursuant to Section 305, subsection (G) or pursuant to
7 the federal Mobile Telecommunications Sourcing Act will not be required to provide liability
8 relief for errors resulting from the reliance on the information provided by the member state
9 under the provisions of Section 305, subsection (F).

10
11 **Section 307: DATABASE REQUIREMENTS AND EXCEPTIONS**

- 12 A. The electronic databases provided for in Section 305, subsections (D), (E), (F), and (G)
13 shall be in a downloadable format approved by the governing board.
- 14 B. The provisions of Section 305, subsections (F) and (G) do not apply when the purchased
15 product is received by the purchaser at the business location of the seller.
- 16 C. The databases provided by Section 305, subsections (D), (E), and (F) are not a
17 requirement of a state prior to entering into the Agreement. The governing board shall
18 establish the effective dates for availability and use of the databases.

19
20 **Section 308: STATE AND LOCAL TAX RATES**

- 21 A. No member state shall have multiple state sales and use tax rates on items of personal
22 property or services after December 31, 2005, except that a member state may impose a
23 single additional rate, which may be zero, on food and food ingredients and drugs as
24 defined by state law pursuant to the Agreement.
- 25 B. A member state that has local jurisdictions that levy a sales or use tax shall not have
26 more than one local sales tax rate or more than one local use tax rate per local
27 jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates
28 must be identical.
- 29 C. The provisions of this section do not apply to sales or use taxes levied on electricity,
30 piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail

1 sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured
2 homes, or mobile homes.

3
4 **Section 309: APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS**
5 **FROM THE RULES**

6 A. Each member state shall agree to require sellers to source the retail sale of a product in
7 accordance with Section 310. The provisions of Section 310 apply regardless of the
8 characterization of a product as tangible personal property, a digital good, or a service.
9 The provisions of Section 310 only apply to determine a seller's obligation to pay or
10 collect and remit a sales or use tax with respect to the seller's retail sale of a product.
11 These provisions do not affect the obligation of a purchaser or lessee to remit tax on the
12 use of the product to the taxing jurisdictions of that use.

13 B. Section 310 does not apply to sales or use taxes levied on the following:

- 14 1. The retail sale or transfer of watercraft, modular homes, manufactured homes, or
15 mobile homes. These items must be sourced according to the requirements of each
16 member state.
- 17 2. The retail sale, excluding lease or rental, of motor vehicles, trailers, semi-trailers, or
18 aircraft that do not qualify as transportation equipment, as defined in Section 310,
19 subsection (D). The retail sale of these items shall be sourced according to the
20 requirements of each member state, and the lease or rental of these items must be
21 sourced according to Section 310, subsection (C).
- 22 3. Telecommunications services, as set out in Section 315, shall be sourced in
23 accordance with Section 314.
- 24 4. Until December 31, 2005, florist sales as defined by each member state. Prior to this
25 date, these items must be sourced according to the requirements of each member
26 state.

27
28 **Section 310: GENERAL SOURCING RULES**

29 A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

- 1 1. When the product is received by the purchaser at a business location of the seller, the
2 sale is sourced to that business location.
- 3 2. When the product is not received by the purchaser at a business location of the seller,
4 the sale is sourced to the location where receipt by the purchaser (or the purchaser's
5 donee, designated as such by the purchaser) occurs, including the location indicated
6 by instructions for delivery to the purchaser (or donee), known to the seller.
- 7 3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location
8 indicated by an address for the purchaser that is available from the business records of
9 the seller that are maintained in the ordinary course of the seller's business when use
10 of this address does not constitute bad faith.
- 11 4. When subsections (A)(1), (A)(2), and (A)(3) do not apply, the sale is sourced to the
12 location indicated by an address for the purchaser obtained during the consummation
13 of the sale, including the address of a purchaser's payment instrument, if no other
14 address is available, when use of this address does not constitute bad faith.
- 15 5. When none of the previous rules of subsections (A)(1), (A)(2), (A)(3), or (A)(4)
16 apply, including the circumstance in which the seller is without sufficient information
17 to apply the previous rules, then the location will be determined by the address from
18 which tangible personal property was shipped, from which the digital good or the
19 computer software delivered electronically was first available for transmission by the
20 seller, or from which the service was provided (disregarding for these purposes any
21 location that merely provided the digital transfer of the product sold).

22 B. The lease or rental of tangible personal property, other than property identified in
23 subsection (C) or subsection (D), shall be sourced as follows:

- 24 1. For a lease or rental that requires recurring periodic payments, the first periodic
25 payment is sourced the same as a retail sale in accordance with the provisions of
26 subsection (A). Periodic payments made subsequent to the first payment are sourced
27 to the primary property location for each period covered by the payment. The primary
28 property location shall be as indicated by an address for the property provided by the
29 lessee that is available to the lessor from its records maintained in the ordinary course
30 of business, when use of this address does not constitute bad faith. The property

1 location shall not be altered by intermittent use at different locations, such as use of
2 business property that accompanies employees on business trips and service calls.

3 2. For a lease or rental that does not require recurring periodic payments, the payment is
4 sourced the same as a retail sale in accordance with the provisions of subsection (A).

5 3. This subsection does not affect the imposition or computation of sales or use tax on
6 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
7 property for lease.

8 C. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify
9 as transportation equipment, as defined in subsection (D), shall be sourced as follows:

10 1. For a lease or rental that requires recurring periodic payments, each periodic payment
11 is sourced to the primary property location. The primary property location shall be as
12 indicated by an address for the property provided by the lessee that is available to the
13 lessor from its records maintained in the ordinary course of business, when use of this
14 address does not constitute bad faith. This location shall not be altered by intermittent
15 use at different locations.

16 2. For a lease or rental that does not require recurring periodic payments, the payment is
17 sourced the same as a retail sale in accordance with the provisions of subsection (A).

18 3. This subsection does not affect the imposition or computation of sales or use tax on
19 leases or rentals based on a lump sum or accelerated basis, or on the acquisition of
20 property for lease.

21 D. The retail sale, including lease or rental, of transportation equipment shall be sourced the
22 same as a retail sale in accordance with the provisions of subsection (A),
23 notwithstanding the exclusion of lease or rental in subsection (A). "Transportation
24 equipment" means any of the following:

25 1. Locomotives and railcars that are utilized for the carriage of persons or property in
26 interstate commerce.

27 2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001
28 pounds or greater, trailers, semi-trailers, or passenger buses that are:

29 a. Registered through the International Registration Plan; and

- b. Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
3. Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
4. Containers designed for use on and component parts attached or secured on the items set forth in subsections (D)(1) through (D)(3).

Section 311: GENERAL SOURCING DEFINITIONS

For the purposes of Section 310, subsection (A), the terms "receive" and "receipt" mean:

- A. Taking possession of tangible personal property,
- B. Making first use of services, or
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

Section 312: MULTIPLE POINTS OF USE

Notwithstanding the provisions of Section 310, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form).

- A. Upon receipt of the MPU Exemption Form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
- B. A purchaser delivering the MPU Exemption Form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

1 C. The MPU Exemption Form will remain in effect for all future sales by the seller to the
2 purchaser (except as to the subsequent sale's specific apportionment that is governed by
3 the principle of subsection (B) and the facts existing at the time of the sale) until it is
4 revoked in writing.

5 D. A holder of a direct pay permit shall not be required to deliver a MPU Exemption Form
6 to the seller. A direct pay permit holder shall follow the provisions of subsection (B) in
7 apportioning the tax due on a digital good or a service that will be concurrently available
8 for use in more than one jurisdiction.
9

10 **Section 313: DIRECT MAIL SOURCING**

11 A. Notwithstanding Section 310, a purchaser of direct mail that is not a holder of a direct
12 pay permit shall provide to the seller in conjunction with the purchase either a Direct
13 Mail Form or information to show the jurisdictions to which the direct mail is delivered
14 to recipients.

15 1. Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to
16 collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit
17 the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for
18 all future sales of direct mail by the seller to the purchaser until it is revoked in
19 writing.

20 2. Upon receipt of information from the purchaser showing the jurisdictions to which
21 the direct mail is delivered to recipients, the seller shall collect the tax according to
22 the delivery information provided by the purchaser. In the absence of bad faith, the
23 seller is relieved of any further obligation to collect tax on any transaction where the
24 seller has collected tax pursuant to the delivery information provided by the
25 purchaser.

26 B. If the purchaser of direct mail does not have a direct pay permit and does not provide the
27 seller with either a Direct Mail Form or delivery information, as required by subsection
28 (A) of this section, the seller shall collect the tax according to Section 310, subsection
29 (A)(5). Nothing in this paragraph shall limit a purchaser's obligation for sales or use tax
30 to any state to which the direct mail is delivered.

1 C. If a purchaser of direct mail provides the seller with documentation of direct pay
2 authority, the purchaser shall not be required to provide a Direct Mail Form or delivery
3 information to the seller.
4

5 **Section 314: TELECOMMUNICATION SOURCING RULE**

6 A. Except for the defined telecommunication services in subsection (C), the sale of
7 telecommunication service sold on a call-by-call basis shall be sourced to (i) each level
8 of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii)
9 each level of taxing jurisdiction where the call either originates or terminates and in
10 which the service address is also located.

11 B. Except for the defined telecommunication services in subsection (C), a sale of
12 telecommunications services sold on a basis other than a call-by-call basis, is sourced to
13 the customer's place of primary use.

14 C. The sale of the following telecommunication services shall be sourced to each level of
15 taxing jurisdiction as follows:

16 1. A sale of mobile telecommunications services other than air-to-ground radiotelephone
17 service and prepaid calling service, is sourced to the customer's place of primary use
18 as required by the Mobile Telecommunications Sourcing Act.

19 2. A sale of post-paid calling service is sourced to the origination point of the
20 telecommunications signal as first identified by either (i) the seller's
21 telecommunications system, or (ii) information received by the seller from its service
22 provider, where the system used to transport such signals is not that of the seller.

23 3. A sale of prepaid calling service is sourced in accordance with Section 310. Provided
24 however, in the case of a sale of mobile telecommunications service that is a prepaid
25 telecommunications service, the rule provided in Section 310, subsection (A)(5) shall
26 include as an option the location associated with the mobile telephone number.

27 4. A sale of a private communication service is sourced as follows:

28 a. Service for a separate charge related to a customer channel termination point is
29 sourced to each level of jurisdiction in which such customer channel termination
30 point is located.

- 1 b. Service where all customer termination points are located entirely within one
2 jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the
3 customer channel termination points are located.
- 4 c. Service for segments of a channel between two customer channel termination points
5 located in different jurisdictions and which segment of channel are separately charged
6 is sourced fifty percent in each level of jurisdiction in which the customer channel
7 termination points are located.
- 8 d. Service for segments of a channel located in more than one jurisdiction or levels of
9 jurisdiction and which segments are not separately billed is sourced in each
10 jurisdiction based on the percentage determined by dividing the number of customer
11 channel termination points in such jurisdiction by the total number of customer
12 channel termination points.

13

14 **Section 315: TELECOMMUNICATION SOURCING DEFINITIONS**

15 For the purpose of Section 314, the following definitions apply:

- 16 A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in
17 47 CFR 22.99, in which common carriers are authorized to offer and provide radio
18 telecommunications service for hire to subscribers in aircraft.
- 19 B. "Call-by-call Basis" means any method of charging for telecommunications services
20 where the price is measured by individual calls.
- 21 C. "Communications Channel" means a physical or virtual path of communications over
22 which signals are transmitted between or among customer channel termination points.
- 23 D. "Customer" means the person or entity that contracts with the seller of
24 telecommunications services. If the end user of telecommunications services is not the
25 contracting party, the end user of the telecommunications service is the customer of the
26 telecommunication service, but this sentence only applies for the purpose of sourcing
27 sales of telecommunications services under Section 314. "Customer" does not include a
28 reseller of telecommunications service or for mobile telecommunications service of a
29 serving carrier under an agreement to serve the customer outside the home service
30 provider's licensed service area.

- 1 E. "Customer Channel Termination Point" means the location where the customer either
2 inputs or receives the communications.
- 3 F. "End user" means the person who utilizes the telecommunication service. In the case of
4 an entity, "end user" means the individual who utilizes the service on behalf of the
5 entity.
- 6 G. "Home service provider" means the same as that term is defined in Section 124(5) of
7 Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 8 H. "Mobile telecommunications service" means the same as that term is defined in Section
9 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- 10 I. "Place of primary use" means the street address representative of where the customer's
11 use of the telecommunications service primarily occurs, which must be the residential
12 street address or the primary business street address of the customer. In the case of
13 mobile telecommunications services, "place of primary use" must be within the licensed
14 service area of the home service provider.
- 15 J. "Post-paid calling service" means the telecommunications service obtained by making a
16 payment on a call-by-call basis either through the use of a credit card or payment
17 mechanism such as a bank card, travel card, credit card, or debit card, or by charge made
18 to a telephone number which is not associated with the origination or termination of the
19 telecommunications service. A post-paid calling service includes a telecommunications
20 service that would be a prepaid calling service except it is not exclusively a
21 telecommunication service.
- 22 K. "Prepaid calling service" means the right to access exclusively telecommunications
23 services, which must be paid for in advance and which enables the origination of calls
24 using an access number or authorization code, whether manually or electronically dialed,
25 and that is sold in predetermined units or dollars of which the number declines with use
26 in a known amount.
- 27 L. "Private communication service" means a telecommunication service that entitles the
28 customer to exclusive or priority use of a communications channel or group of channels
29 between or among termination points, regardless of the manner in which such channel or
30 channels are connected, and includes switching capacity, extension lines, stations, and

1 any other associated services that are provided in connection with the use of such
2 channel or channels.

3 M. "Service address" means:

- 4 1. The location of the telecommunications equipment to which a customer's call is
5 charged and from which the call originates or terminates, regardless of where the call
6 is billed or paid.
- 7 2. If the location in subsection (M)(1) is not known, service address means the
8 origination point of the signal of the telecommunications services first identified by
9 either the seller's telecommunications system or in information received by the seller
10 from its service provider, where the system used to transport such signals is not that
11 of the seller.
- 12 3. If the location in subsection (M)(1) and subsection (M)(2) are not known, the service
13 address means the location of the customer's place of primary use.

14
15 **Section 316: ENACTMENT OF EXEMPTIONS**

16 A. A member state may enact a product-based exemption without restriction if the
17 Agreement does not have a definition for the product or for a term that includes the
18 product. If the Agreement has a definition for the product or for a term that includes the
19 product, a member state may exempt all items included within the definition but shall
20 not exempt only part of the items included within the definition unless the Agreement
21 sets out the exemption for part of the items as an acceptable variation.

22 B. A member state may enact an entity-based or a use-based exemption without restriction
23 if the Agreement does not have a definition for the product whose use or purchase by a
24 specific entity is exempt or for a term that includes the product. If the Agreement has a
25 definition for the product whose use or specific purchase is exempt, a member state may
26 enact an entity-based or a use-based exemption that applies to that product as long as the
27 exemption utilizes the Agreement definition of the product. If the Agreement does not
28 have a definition for the product whose use or specific purchase is exempt but has a
29 definition for a term that includes the product, a member state may enact an entity-based
30 or a use-based exemption for the product without restriction.

1 C. For purposes of complying with the requirements in this section, the inclusion of a
2 product within the definition of tangible personal property is disregarded.
3

4 **Section 317: ADMINISTRATION OF EXEMPTIONS**

5 A. Each member state shall observe the following provisions when a purchaser claims an
6 exemption:

- 7 1. The seller shall obtain identifying information of the purchaser and the reason for
8 claiming a tax exemption at the time of the purchase as determined by the governing
9 board.
- 10 2. A purchaser is not required to provide a signature to claim an exemption from tax
11 unless a paper exemption certificate is used.
- 12 3. The seller shall use the standard form for claiming an exemption electronically as
13 adopted by the governing board.
- 14 4. The seller shall obtain the same information for proof of a claimed exemption
15 regardless of the medium in which the transaction occurred.
- 16 5. A member state may utilize a system wherein the purchaser exempt from the payment
17 of the tax is issued an identification number that shall be presented to the seller at the
18 time of the sale.
- 19 6. The seller shall maintain proper records of exempt transactions and provide them to a
20 member state when requested.
- 21 7. A member state shall administer use-based and entity-based exemptions when
22 practicable through a direct pay permit, an exemption certificate, or another means
23 that does not burden sellers.

24 B. Each member state shall relieve sellers that follow the requirements of this section from
25 any tax otherwise applicable if it is determined that the purchaser improperly claimed an
26 exemption and to hold the purchaser liable for the nonpayment of tax. This relief from
27 liability does not apply to a seller who fraudulently fails to collect the tax or solicits
28 purchasers to participate in the unlawful claim of an exemption.
29

30 **Section 318: UNIFORM TAX RETURNS**

1 Each member state shall:

- 2 A. Require that only one tax return for each taxing period for each seller be filed for the
3 member state and all the taxing jurisdictions within the member state.
- 4 B. Require that returns be due no sooner than the twentieth day of the month following the
5 month in which the transaction occurred.
- 6 C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in
7 a simplified format that does not include more data fields than permitted by the
8 governing board. A member state may require additional informational returns to be
9 submitted not more frequently than every six months under a staggered system
10 developed by the governing board.
- 11 D. Allow any seller that is registered under the Agreement, which does not have a legal
12 requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit
13 its sales and use tax returns as follows:
 - 14 1. Upon registration, a member state shall provide to the seller the returns required by
15 that state.
 - 16 2. A member state may require a seller to file a return anytime within one year of the
17 month of initial registration, and future returns may be required on an annual basis in
18 succeeding years.
 - 19 3. In addition to the returns required in subsection (D)(2), a member state may require
20 sellers to submit returns in the month following any month in which they have
21 accumulated state and local tax funds for the state in the amount of one thousand
22 dollars or more.
- 23 E. Participate with other member states in developing a more uniform sales and use tax
24 return that, when completed, would be available to all sellers.
- 25 F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns
26 electronically. It is the intent of the member states that all member states have the
27 capability of receiving electronically filed returns by January 1, 2004.

28
29 **Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS**

30 Each member state shall:

- 1 A. Require only one remittance for each return except as provided in this subsection. If any
2 additional remittance is required, it may only be required from sellers that collect more
3 than thirty thousand dollars in sales and use taxes in the member state during the
4 preceding calendar year as provided herein. The amount of the additional remittance
5 shall be determined through a calculation method rather than actual collections and shall
6 not require the filing of an additional return.
- 7 B. Require, at each member state's discretion, all remittances from sellers under Models 1,
8 2, and 3 to be remitted electronically.
- 9 C. Allow for electronic payments by both ACH Credit and ACH Debit.
- 10 D. Provide an alternative method for making "same day" payments if an electronic funds
11 transfer fails.
- 12 E. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are
13 due to that state on the next succeeding business day.
- 14 F. Require that any data that accompanies a remittance be formatted using uniform tax type
15 and payment type codes approved by the governing board.
- 16

17 **Section 320: UNIFORM RULES FOR RECOVERY OF BAD DEBTS**

18 Each member state shall use the following to provide a deduction for bad debts to a seller. To
19 the extent a member state provides a bad debt deduction to any other party, the same procedures
20 will apply. Each member state shall:

- 21 A. Allow a deduction from taxable sales for bad debts. Any deduction taken that is
22 attributed to bad debts shall not include interest.
- 23 B. Utilize the federal definition of "bad debt" in 26 U.S.C. Sec. 166 as the basis for
24 calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C.
25 Sec. 166 shall be adjusted to exclude: financing charges or interest; sales or use taxes
26 charged on the purchase price; uncollectable amounts on property that remain in the
27 possession of the seller until the full purchase price is paid; expenses incurred in
28 attempting to collect any debt, and repossessed property.
- 29 C. Allow bad debts to be deducted on the return for the period during which the bad debt is
30 written off as uncollectable in the claimant's books and records and is eligible to be

1 deducted for federal income tax purposes. For purposes of this subsection, a claimant
2 who is not required to file federal income tax returns may deduct a bad debt on a return
3 filed for the period in which the bad debt is written off as uncollectable in the claimant's
4 books and records and would be eligible for a bad debt deduction for federal income tax
5 purposes if the claimant was required to file a federal income tax return.

6 D. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected
7 in whole or in part, the tax on the amount so collected must be paid and reported on the
8 return filed for the period in which the collection is made.

9 E. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the
10 period during which the bad debt is written off, a refund claim may be filed within the
11 member state's otherwise applicable statute of limitations for refund claims; however,
12 the statute of limitations shall be measured from the due date of the return on which the
13 bad debt could first be claimed.

14 F. Where filing responsibilities have been assumed by a CSP, allow the service provider to
15 claim, on behalf of the seller, any bad debt allowance provided by this section. The CSP
16 must credit or refund the full amount of any bad debt allowance or refund received to the
17 seller.

18 G. Provide that, for the purposes of reporting a payment received on a previously claimed
19 bad debt, any payments made on a debt or account are applied first proportionally to the
20 taxable price of the property or service and the sales tax thereon, and secondly to
21 interest, service charges, and any other charges.

22 H. In situations where the books and records of the party claiming the bad debt allowance
23 support an allocation of the bad debts among the member states, permit the allocation.
24

25 **Section 321: CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1**

26 A. The purpose of this section is to set forth the member states' policy for the protection of
27 the confidentiality rights of all participants in the system and of the privacy interests of
28 consumers who deal with Model 1 sellers.

29 B. As used in this section, the term "confidential taxpayer information" means all
30 information that is protected under a member state's laws, regulations, and privileges; the

1 term "personally identifiable information" means information that identifies a person;
2 and the term "anonymous data" means information that does not identify a person.

3 C. The member states agree that a fundamental precept in Model 1 is to preserve the
4 privacy of consumers by protecting their anonymity. With very limited exceptions, a
5 CSP shall perform its tax calculation, remittance, and reporting functions without
6 retaining the personally identifiable information of consumers.

7 D. The governing board may certify a CSP only if that CSP certifies that:

- 8 1. Its system has been designed and tested to ensure that the fundamental precept of
9 anonymity is respected;
- 10 2. That personally identifiable information is only used and retained to the extent
11 necessary for the administration of Model 1 with respect to exempt purchasers;
- 12 3. It provides consumers clear and conspicuous notice of its information practices,
13 including what information it collects, how it collects the information, how it uses the
14 information, how long, if at all, it retains the information and whether it discloses the
15 information to member states. Such notice shall be satisfied by a written privacy
16 policy statement accessible by the public on the official web site of the CSP;
- 17 4. Its collection, use and retention of personally identifiable information will be limited
18 to that required by the member states to ensure the validity of exemptions from
19 taxation that are claimed by reason of a consumer's status or the intended use of the
20 goods or services purchased; and
- 21 5. It provides adequate technical, physical, and administrative safeguards so as to
22 protect personally identifiable information from unauthorized access and disclosure.

23 E. Each member state shall provide public notification to consumers, including their exempt
24 purchasers, of the state's practices relating to the collection, use and retention of
25 personally identifiable information.

26 F. When any personally identifiable information that has been collected and retained is no
27 longer required for the purposes set forth in subsection (D)(4), such information shall no
28 longer be retained by the member states.

29 G. When personally identifiable information regarding an individual is retained by or on
30 behalf of a member state, such state shall provide reasonable access by such individual to

1 his or her own information in the state's possession and a right to correct any inaccurately
2 recorded information.

3 H. If anyone other than a member state, or a person authorized by that state's law or the
4 Agreement, seeks to discover personally identifiable information, the state from whom
5 the information is sought should make a reasonable and timely effort to notify the
6 individual of such request.

7 I. This privacy policy is subject to enforcement by member states' attorneys general or other
8 appropriate state government authority.

9 J. Each member states' laws and regulations regarding the collection, use, and maintenance
10 of confidential taxpayer information remain fully applicable and binding. Without
11 limitation, the Agreement does not enlarge or limit the member states' authority to:

- 12 1. Conduct audits or other review as provided under the Agreement and state law.
- 13 2. Provide records pursuant to a member state's Freedom of Information Act, disclosure
14 laws with governmental agencies, or other regulations.
- 15 3. Prevent, consistent with state law, disclosures of confidential taxpayer information.
- 16 4. Prevent, consistent with federal law, disclosures or misuse of federal return
17 information obtained under a disclosure agreement with the Internal Revenue Service.
- 18 5. Collect, disclose, disseminate, or otherwise use anonymous data for governmental
19 purposes.

20 K. This privacy policy does not preclude the governing board from certifying a CSP whose
21 privacy policy is more protective of confidential taxpayer information or personally
22 identifiable information than is required by the Agreement.

23 24 **Section 322: SALES TAX HOLIDAYS**

25 A. If a member state allows for temporary exemption periods, commonly referred to as sales
26 tax holidays, the member state shall:

- 27 1. Not apply an exemption after December 31, 2004, unless the items to be exempted
28 are specifically defined in the Agreement and the exemptions are uniformly applied to
29 state and local sales and use taxes.

- 1 2. Provide notice of the exemption period at least sixty days' prior to the first day of the
2 calendar quarter in which the exemption period will begin.
- 3 B. A member state may establish a sales tax holiday that utilizes price thresholds set
4 by such state and the provisions of the Agreement on the use of thresholds shall
5 not apply to exemptions provided by a state during a sales tax holiday. In order to
6 provide uniformity, a price threshold established by a member state for exempt
7 items shall include only items priced below the threshold. A member state shall
8 not exempt only a portion of the price of an individual item during a sales tax
9 holiday.
- 10 C. The following procedures are to be used by member states in administering a
11 sales tax holiday exemption:
- 12 1. Layaway sales - A sale of eligible property under a layaway sale qualifies for
13 exemption if:
- 14 a. final payment on a layaway order is made by, and the property is given to,
15 the purchaser during the exemption period; or
- 16 b. the purchaser selects the property and the retailer accepts the order for the
17 item during the exemption period, for immediate delivery upon full
18 payment, even if delivery is made after the exemption period.
- 19 2. Bundled sales - Member states will follow the same procedure during the sales
20 tax holiday as agreed upon for handling a bundled sale at other times.
- 21 3. Coupons and discounts - A discount by the seller reduces the sales price of the
22 property and the discounted sales price determines whether the sales price is
23 within a sales tax holiday price threshold of a member state. A coupon that
24 reduces the sales price is treated as a discount if the seller is not reimbursed
25 for the coupon amount by a third-party. If a discount applies to the total
26 amount paid by a purchaser rather than to the sales price of a particular item
27 and the purchaser has purchased both eligible property and taxable property,
28 the seller should allocate the discount based on the total sales prices of the
29 taxable property compared to the total sales prices of all property sold in that
30 same transaction.

- 1 4. Splitting of items normally sold together - Articles that are normally sold as a
2 single unit must continue to be sold in that manner. Such articles cannot be
3 priced separately and sold as individual items in order to obtain the
4 exemption. For example, a pair of shoes cannot have each shoe sold
5 separately so that the sales price of each shoe is within a sales tax holiday
6 price threshold.
- 7 5. Rain checks - A rain check allows a customer to purchase an item at a certain
8 price at a later time because the particular item was out of stock. Eligible
9 property that customers purchase during the exemption period with use of a
10 rain check will qualify for the exemption regardless of when the rain check
11 was issued. Issuance of a rain check during the exemption period will not
12 qualify eligible property for the exemption if the property is actually
13 purchased after the exemption period.
- 14 6. Exchanges - The procedure for an exchange in regards to a sales tax holiday is
15 as follows:
- 16 a. If a customer purchases an item of eligible property during the exemption
17 period, but later exchanges the item for a similar eligible item, even if a
18 different size, different color, or other feature, no additional tax is due
19 even if the exchange is made after the exemption period.
- 20 b. If a customer purchases an item of eligible property during the exemption
21 period, but after the exemption period has ended, the customer returns the
22 item and receives credit on the purchase of a different item, the
23 appropriate sales tax is due on the sale of the newly purchased item.
- 24 c. If a customer purchases an item of eligible property before the exemption
25 period, but during the exemption period the customer returns the item and
26 receives credit on the purchase of a different item of eligible property, no
27 sales tax is due on the sale of the new item if the new item is purchased
28 during the exemption period.
- 29 7. Delivery charges - Delivery charges, including shipping, handling and service
30 charges, are part of the sales price of eligible property unless a member state

1 defines "sales price" to exclude such charges. For the purpose of determining
2 a sales tax holiday price threshold, if all the property in a shipment qualifies as
3 eligible property and the sales price for each item in the shipment is within the
4 sales tax holiday price threshold, then the seller does not have to allocate the
5 delivery, handling, or service charge to determine if the price threshold is
6 exceeded. The shipment will be considered a sale of eligible products. If the
7 shipment includes eligible property and taxable property (including an eligible
8 item with a sales price in excess of the price threshold), the seller should
9 allocate the delivery charge by using:

- 10 a. a percentage based on the total sales prices of the taxable property
11 compared to the total sales prices of all property in the shipment; or
- 12 b. a percentage based on the total weight of the taxable property compared to
13 the total weight of all property in the shipment.

14 The seller must tax the percentage of the delivery charge allocated to the
15 taxable property but does not have to tax the percentage allocated to the
16 eligible property.

17 8. Order date and back orders - For the purpose of a sales tax holiday, eligible
18 property qualifies for exemption if:

- 19 a. the item is both delivered to and paid for by the customer during the
20 exemption period; or
- 21 b. the customer orders and pays for the item and the seller accepts the order
22 during the exemption period for immediate shipment, even if delivery is
23 made after the exemption period. The seller accepts an order when the
24 seller has taken action to fill the order for immediate shipment. Actions to
25 fill an order include placement of an "in date" stamp on a mail order or
26 assignment of an "order number" to a telephone order. An order is for
27 immediate shipment when the customer does not request delayed
28 shipment. An order is for immediate shipment notwithstanding that the
29 shipment may be delayed because of a backlog of orders or because stock
30 is currently unavailable to, or on back order by, the seller.

1 9. Returns - For a 60-day period immediately after the sales tax holiday
2 exemption period, when a customer returns an item that would qualify for the
3 exemption, no credit for or refund of sales tax shall be given unless the
4 customer provides a receipt or invoice that shows tax was paid, or the seller
5 has sufficient documentation to show that tax was paid on the specific item.
6 This 60-day period is set solely for the purpose of designating a time period
7 during which the customer must provide documentation that shows that sales
8 tax was paid on returned merchandise. The 60-day period is not intended to
9 change a seller's policy on the time period during which the seller will accept
10 returns.

11 10. Different time zones - The time zone of the seller's location determines the authorized
12 time period for a sales tax holiday when the purchaser is located in one time zone and
13 a seller is located in another.
14

15 **Section 323: CAPS AND THRESHOLDS**

16 A. Each member state shall:

17 1. Not have caps or thresholds on the application of state sales or use tax rates or
18 exemptions that are based on the value of the transaction or item after December 31,
19 2005. A member state may continue to have caps and thresholds until that date.

20 2. Not have caps that are based on the application of the rates unless the member state
21 assumes the administrative responsibility in a manner that places no additional burden
22 on the retailer.

23 B. Each member state that has local jurisdictions that levy a sales or use tax shall not place
24 caps or thresholds on the application of local rates or use tax rates or exemptions that are
25 based on the value of the transaction or item after December 31, 2005. A member state
26 may continue to have caps and thresholds until that date.

27 C. The provisions of this section do not apply to sales or use taxes levied on the retail sale or
28 transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or
29 mobile homes or to instances where the burden of administration has been shifted from
30 the retailer.

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Section 324: ROUNDING RULE

- A. After December 31, 2005, each member state shall adopt a rounding algorithm that meets the following criteria:
 - 1. Tax computation must be carried to the third decimal place, and
 - 2. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.
- B. Each state shall allow sellers to elect to compute the tax due on a transaction on an item or an invoice basis, and shall allow the rounding rule to be applied to the aggregated state and local taxes. No member state shall require a seller to collect tax based on a bracket system.

Section 325: CUSTOMER REFUND PROCEDURES

- A. These customer refund procedures are provided to apply when a state allows a purchaser to seek a return of over-collected sales or use taxes from the seller.
- B. Nothing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.
- C. These customer refund procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.
- D. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller: i) uses either a provider or a system,

1 including a proprietary system, that is certified by the state; and ii) has remitted to the
2 state all taxes collected less any deductions, credits, or collection allowances.
3

4 **Section 326: DIRECT PAY PERMITS**

5 Each member state shall provide for a direct pay authority that allows the holder of a direct pay
6 permit to purchase otherwise taxable goods and services without payment of tax to the supplier
7 at the time of purchase. The holder of the direct pay permit will make a determination of the
8 taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each
9 state can set its own limits and requirements for the direct pay permit. The governing board shall
10 advise member states when setting state direct pay limits and requirements, and shall consider
11 use of the Model Direct Payment Permit Regulation as developed by the Task Force on EDI
12 Audit and Legal Issues for Tax Administration.
13

14 **Section 327: LIBRARY OF DEFINITIONS**

15 Each member state shall utilize common definitions as provided in this section. The terms
16 defined are set out in the Library of Definitions, in Appendix C of this Agreement. A member
17 state shall adhere to the following principles:

- 18 A. If a term defined in the Library of Definitions appears in a member state's sales
19 and use tax statutes or administrative rules or regulations, the member state shall
20 enact or adopt the Library definition of the term in its statutes or administrative
21 rules or regulations in substantially the same language as the Library definition.
- 22 B. A member state shall not use a Library definition in its sales or use tax statutes or
23 administrative rules or regulations that is contrary to the meaning of the Library
24 definition.
- 25 C. Except as specifically provided in Section 316 and the Library of Definitions, a
26 member state shall impose a sales or use tax on all products or services included
27 within each definition or exempt from sales or use tax all products or services
28 within each definition.
29

30 **Section 328: TAXABILITY MATRIX**

- 1 A. To ensure uniform application of terms defined in the Library of Definitions each
2 member state shall complete a taxability matrix adopted by the governing board.
3 The member state's entries in the matrix shall be provided and maintained in a
4 database that is in a downloadable format approved by the governing board. A
5 member state shall provide notice of changes in the taxability of the products or
6 services listed in the taxability matrix as required by the governing board.
- 7 B. A member state shall relieve sellers and CSPs from liability to the member state and
8 its local jurisdictions for having charged and collected the incorrect amount of sales
9 or use tax resulting from the seller or CSP relying on erroneous data provided by the
10 member state in the taxability matrix.

11

12 **Section 329: EFFECTIVE DATE FOR RATE CHANGES**

13 Each member state shall provide that the effective date of rate changes for services covering a
14 period starting before and ending after the statutory effective date shall be as follows:

- 15 A. For a rate increase, the new rate shall apply to the first billing period starting on or after
16 the effective date.
- 17 B. For a rate decrease, the new rate shall apply to bills rendered on or after the effective
18 date.

19

ARTICLE IV
SELLER REGISTRATION

Section 401: SELLER PARTICIPATION

- A. The member states shall provide an online registration system that will allow sellers to register in all the member states.
- B. By registering, the seller agrees to collect and remit sales and use taxes for all taxable sales into the member states, including member states joining after the seller's registration. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.
- C. In member states where the seller has a requirement to register prior to registering under the Agreement, the seller may be required to provide additional information to complete the registration process or the seller may choose to register directly with those states.
- D. A member state or a state that has withdrawn or been expelled shall not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has nexus with that state for any tax at any time.

Section 402: AMNESTY FOR REGISTRATION

- A. Subject to the limitations in this section:
1. A member state shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the Agreement, provided that the seller was not so registered in that state in the twelve-month period preceding the effective date of the state's participation in the Agreement.
 2. The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the state, provided registration occurs within twelve months of the effective date of the state's participation in the Agreement.

1 3. Amnesty similarly shall be provided by any additional state that joins the Agreement
2 after the seller has registered.

3 B. The amnesty is not available to a seller with respect to any matter or matters for which
4 the seller received notice of the commencement of an audit and which audit is not yet
5 finally resolved including any related administrative and judicial processes.

6 C. The amnesty is not available for sales or use taxes already paid or remitted to the state or
7 to taxes collected by the seller.

8 D. The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of
9 a material fact, as long as the seller continues registration and continues payment or
10 collection and remittance of applicable sales or use taxes for a period of at least thirty-six
11 months. Each member state shall toll its statute of limitations applicable to asserting a tax
12 liability during this thirty-six month period.

13 E. The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a
14 seller and not to sales or use taxes due from a seller in its capacity as a buyer.

15 F. A member state may allow amnesty on terms and conditions more favorable to a seller
16 than the terms required by this section.

17
18 **Section 403: METHOD OF REMITTANCE**

19 When registering, the seller may select one of the following methods of remittances or other
20 method allowed by state law to remit the taxes collected:

21 A. MODEL 1, wherein a seller selects a CSP as an agent to perform all the seller's sales or
22 use tax functions, other than the seller's obligation to remit tax on its own purchases.

23 B. MODEL 2, wherein a seller selects a CAS to use which calculates the amount of tax due
24 on a transaction.

25 C. MODEL 3, wherein a seller utilizes its own proprietary automated sales tax system that
26 has been certified as a CAS.

27
28 **Section 404: REGISTRATION BY AN AGENT**

29 A seller may be registered by an agent. Such appointment shall be in writing and submitted to a
30 member state if requested by the member state.

1 **ARTICLE V**

2 **PROVIDER AND SYSTEM CERTIFICATION**

3
4 **Section 501: CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED**
5 **SYSTEMS**

- 6 A. The governing board shall certify automated systems and service providers to aid in the
7 administration of sale and use tax collections.
- 8 B. The governing board may certify a person as a CSP if the person meets all of the
9 following requirements:
- 10 1. The person uses a CAS;
 - 11 2. The person integrates its CAS with the system of a seller for whom the person
12 collects tax so that the tax due on a sale is determined at the time of the sale;
 - 13 3. The person agrees to remit the taxes it collects at the time and in the manner specified
14 by the member states;
 - 15 4. The person agrees to file returns on behalf of the sellers for whom it collects tax;
 - 16 5. The person agrees to protect the privacy of tax information it obtains in accordance
17 with Section 321 of the Agreement; and
 - 18 6. The person enters into a contract with the member states and agrees to comply with
19 the terms of the contract.
- 20 C. The governing board may certify a software program as a CAS if the governing board
21 determines that the program meets all of the following requirements:
- 22 1. It determines the applicable state and local sales and use tax rate for a transaction, in
23 accordance with Sections 309 to 315, inclusive;
 - 24 2. It determines whether or not an item is exempt from tax;
 - 25 3. It determines the amount of tax to be remitted for each taxpayer for a reporting
26 period;
 - 27 4. It can generate reports and returns as required by the governing board; and
 - 28 5. It can meet any other requirement set by the governing board.
- 29 D. The governing board may establish one or more sales tax performance standards for
30 Model 3 sellers that meet the eligibility criteria set by the governing board and that

1 developed a proprietary system to determine the amount of sales and use tax due on
2 transactions.

1 **ARTICLE VI**

2 **MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES**
3 **TAX COLLECTION**

4
5 **Section 601: MONETARY ALLOWANCE UNDER MODEL 1**

- 6 A. Each member state shall provide a monetary allowance to a CSP in Model 1 in
7 accordance with the terms of the contract between the governing board and the CSP. The
8 details of the monetary allowance will be provided through the contract process. The
9 governing board shall require that such allowance be funded entirely from money
10 collected in Model 1.
- 11 B. The contract between the governing board and a CSP may base the monetary allowance
12 to a CSP on one or more of the following:
- 13 1. A base rate that applies to taxable transactions processed by the CSP.
 - 14 2. For a period not to exceed twenty-four months following a voluntary seller's
15 registration through the Agreement's central registration process, a percentage of tax
16 revenue generated for a member state by the voluntary seller for each member state
17 for which the seller does not have a requirement to register to collect the tax.

18
19 **Section 602: MONETARY ALLOWANCE FOR MODEL 2 SELLERS**

20 The member states initially anticipate that they will provide a monetary allowance to sellers
21 under Model 2 based on the following:

- 22 A. All sellers shall receive a base rate for a period not to exceed twenty-four months
23 following the commencement of participation by a seller. The base rate will be set after
24 the base rate has been established for Model 1. This allowance will be in addition to any
25 discount afforded by each member state at the time.
- 26 B. The member states anticipate a monetary allowance to a Model 2 Seller based on the
27 following:
- 28 1. For a period not to exceed twenty-four months following a voluntary seller's
29 registration through the Agreement's central registration process, a percentage of tax

1 revenue generated for a member state by the voluntary seller for each member state
2 for which the seller does not have a requirement to register to collect the tax.

- 3 2. Following the conclusion of the twenty-four month period, a seller will only be
4 entitled to a vendor discount afforded under each member state's law at the time the
5 base rate expires.

6
7 **Section 603: MONETARY ALLOWANCE FOR MODEL 3 SELLERS AND ALL OTHER**
8 **SELLERS THAT ARE NOT UNDER MODELS 1 OR 2**

9 The member states anticipate that they will provide a monetary allowance to sellers under Model
10 3 and to all other sellers that are not under Models 1 or 2 based on the following:

- 11 A. For a period not to exceed twenty-four months following a voluntary seller's registration
12 through the Agreement's central registration process, a percentage of tax revenue
13 generated for a member state by the voluntary seller for each member state for which the
14 seller does not have a requirement to register to collect the tax.
- 15 B. Vendor discounts afforded under each member state's law.

1 **ARTICLE VII**
2 **AGREEMENT ORGANIZATION**
3

4 **Section 701: EFFECTIVE DATE**

5 The Agreement shall become binding and take effect when at least ten states comprising at least twenty
6 percent of the total population, as determined by the 2000 Federal census, of all states imposing a state
7 sales tax have petitioned for membership and have been found to be in compliance with the
8 requirements of the Agreement pursuant to Section 805. The Agreement shall take effect on the first
9 day of a calendar quarter at least sixty days after the tenth state is found in compliance, but cannot take
10 effect prior to July 1, 2003.

11
12 **Section 702: APPROVAL OF INITIAL STATES**

13 Prior to the effective date of the Agreement, a state may seek membership by forwarding a petition for
14 membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax Implementing
15 States. A petitioning state shall also provide a copy of its petition for membership and certificate of
16 compliance to each of the Streamlined Sales Tax Implementing States. A petitioning state shall also
17 post a copy of its petition for membership and certificate of compliance on that state's web site.

18
19 Upon receipt of the requisite number of petitions as provided in Section 701, the Co-Chairs shall
20 convene and preside over a meeting of the petitioning states for the purpose of determining if the
21 petitioning states are in compliance with the Agreement. An affirmative vote of three-fourths of the
22 other petitioning states is necessary for a petitioning state to be found in compliance with the
23 Agreement. A petitioning state shall not vote on its own petition for membership.

24
25 The Co-Chairs shall provide the public with an opportunity to comment prior to any vote on a state's
26 petition for membership.

27
28 **Section 703: STREAMLINED SALES TAX IMPLEMENTING STATES**

1 A. From the time of ratification of this Agreement until the provisions of Section 701 have been met, the
2 Streamlined Sales Tax Implementing State shall maintain responsibility for the Agreement, including
3 the disposition of all proposed amendments to the Agreement.

4

5 B. Amendments to the Agreement considered by the Streamlined Sales Tax Implementing States shall
6 follow the provisions as set forth in Article IX, Section 901.

7

8 C. For a period of not less than six months nor longer than one year after the provisions of Section 701
9 are met, the Streamlined Sales Tax Implementing States shall provide advice to the Governing Board of
10 the Agreement and shall be consulted by the Governing Board before amending the Agreement.

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ARTICLE VIII
STATE ENTRY AND WITHDRAWAL

Section 801: ENTRY INTO AGREEMENT

After the effective date of the Agreement, a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. The petition for membership shall include such state’s proposed date of entry. The petitioning state’s proposed date of entry shall be on the first day of a calendar quarter. The proposed date of entry shall be a date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective.

The petitioning state shall provide a copy of its petition for membership and the certificate of compliance to each member state when the petitioning state submits its petition for membership to the governing board. A petitioning state shall also post a copy of its petition for membership and certificate of compliance on that state’s web site.

Section 802: CERTIFICATE OF COMPLIANCE

The certificate of compliance shall be signed by the chief executive of the state’s tax agency. The certificate of compliance shall document compliance with the provisions of the Agreement and cite applicable statutes, rules, regulations, or other authorities evidencing such compliance.

Section 803: ANNUAL RE-CERTIFICATION OF MEMBER STATES

Each member state shall annually re-certify that such state is in compliance with the Agreement. Each member state shall make a re-certification to the governing board on or before August 1 of each year after the year of the state’s entry. In its annual re-certification, the state shall include any changes in its statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the Agreement. The re-certification shall be signed by the chief executive of the state’s tax agency.

1 A member state that cannot re-certify its compliance with the Agreement shall submit a statement of
2 non-compliance to the governing board. The statement of non-compliance shall include any action or
3 decision that takes such state out of compliance with the Agreement and the steps it will take to return to
4 compliance. The governing board shall promulgate rules and procedures to respond to statements of
5 noncompliance in accordance with Section 809.

6
7 Each member state shall post its annual re-certification or statement of non-compliance on that state's
8 web site.

9
10 **Section 804: REQUIREMENTS FOR MEMBERSHIP APPROVAL**

11 The governing board shall determine if a petitioning state is in compliance with the Agreement. A three-
12 fourths vote of the entire governing board is required to approve a state's petition for membership. The
13 governing board shall provide public notice and opportunity for comment prior to voting on a state's
14 petition for membership. A state's membership is effective on the proposed date of entry in its petition
15 for membership or the first day of the calendar quarter after its petition is approved by the governing
16 board, whichever is later, and is at least sixty days after its petition is approved.

17
18 **Section 805: COMPLIANCE**

19 A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and
20 policies is substantially compliant with each of the requirements set forth in the Agreement.

21
22 **Section 806: AGREEMENT ADMINISTRATION**

23 Authority to administer the Agreement shall rest with the governing board comprised of representatives
24 of each member state. Each member state may appoint up to four representatives to the governing
25 board. The representatives shall be members of the executive or legislative branches of the state. Each
26 member state shall be entitled to one vote on the governing board. Except as otherwise provided in the
27 Agreement, all actions taken by the governing board shall require an affirmative vote of a majority of
28 the governing board present and voting. The governing board shall determine its meeting schedule, but
29 shall meet at least once annually. The governing board shall provide a public comment period at each
30 meeting to provide members of the public an opportunity to address the board on matters relevant to the

1 administration or operation of the Agreement. The governing board shall provide public notice of its
2 meetings at least thirty days in advance of such meetings. The governing board shall promulgate rules
3 establishing the public notice requirements for holding emergency meetings on less than thirty day's
4 notice. The governing board may meet electronically.

5
6 The governing board is responsible for the administration and operation of the Agreement, including the
7 appointment of all manner of committees. The governing board may employ staff, advisors, consultants
8 or agents. The governing board may promulgate rules and procedures it deems necessary to carry out its
9 responsibilities. The governing board may take any action that is necessary and proper to fulfill the
10 purposes of the Agreement. The governing board may allocate the cost of administration of the
11 Agreement among the member states.

12
13 The governing board may assign committees certain duties, including, but not limited to:

- 14 A. Responding to questions regarding the administration of the Agreement;
- 15 B. Preparing certification requirements and coordinating the certification process for CSPs;
- 16 C. Coordinating joint audits;
- 17 D. Issuing requests for proposals;
- 18 E. Coordinating contracts with member states and providers; and
- 19 F. Maintaining records for the governing board.

20
21 **Section 807: OPEN MEETINGS**

22 Each meeting of the governing board and the minutes thereof shall be open to the public except as
23 provided herein. Meetings of the governing board may be closed only for one or more of the following:

- 24 A. Personnel issues.
- 25 B. Information required by the laws of any member state to be protected from public disclosure. In
26 the meeting, the governing board shall excuse any attendee to whom confidential taxpayer
27 information cannot be disclosed under the law of any member state.
- 28 C. Proprietary information requested by any business to be protected from disclosure.

- 1 D. The consideration of issues incident to competitive bidding, requests for information, or
2 certification, the disclosure of which would defeat the public interest in a fair and competitive
3 process.
- 4 E. The consideration of pending litigation in a member state the discussion of which in a public
5 session would, in the judgment of the member state engaged in the litigation, adversely affect its
6 interests. In the meeting, the governing board shall excuse any attendee to whom confidential
7 taxpayer information cannot be disclosed under the law of any member state.

8 A closed session of the governing board may be convened by the chair or by a majority vote of the
9 governing board. When a closed session is convened, the reason for the closed session shall be noted in
10 a public session. Any actions taken in the closed session shall be reported immediately upon the
11 reconvening of a public session.

12

13 **Section 808: WITHDRAWAL OF MEMBERSHIP OR EXPULSION OF A MEMBER**

14 With respect to each member state, the Agreement shall continue in full force and effect until a member
15 state withdraws its membership or is expelled. A member state's withdrawal or expulsion cannot be
16 effective until the first day of a calendar quarter after a minimum of sixty days' notice. A member state
17 shall submit notice of its intent to withdraw from the Agreement to the governing board and the chief
18 executive of each member state's tax agency. The member state shall provide public notice of its intent
19 to withdraw and post its notice of intent to withdraw on its web site. The withdrawal by or expulsion of
20 a state does not affect the validity of the Agreement among other member states. A state that withdraws
21 or is expelled from the Agreement remains liable for its share of any financial or contractual obligations
22 that were incurred by the governing board prior to the effective date of that state's withdrawal or
23 expulsion. The appropriate share of any financial or contractual obligation shall be determined by the
24 state and the governing board in good faith based on the relative benefits received and burdens incurred
25 by the parties.

26

27 **Section 809: SANCTION OF MEMBER STATES**

28 If a member state is found to be out of compliance with the Agreement, the governing board may
29 consider sanctions against the state. The sanctions that the governing board may impose include

1 expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of
2 a resolution to sanction a member state for noncompliance with the Agreement shall require the
3 affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of
4 the resolution. The member state that is the subject of the resolution shall not vote on such resolution.
5 Resolutions seeking sanctions shall be acted upon by the governing board within a reasonable period of
6 time as set forth in the governing board's rules. The governing board shall provide an opportunity for
7 public comment prior to action on a proposed sanction.

8
9 **Section 810: STATE AND LOCAL ADVISORY COUNCIL**

10 The governing board shall create a State and Local Government Advisory Council to advise the
11 governing board on matters pertaining to the administration of the Agreement. The membership shall
12 include at least one representative from each state that is a participating member of the Streamlined
13 Sales Tax Project pursuant to the Operating Rules of the Project as designated by that state. In addition,
14 the governing board shall appoint local government officials to the State and Local Government
15 Advisory Council. The governing board may appoint other state officials as it deems appropriate.
16 Matters pertaining to the administration of the Agreement shall include, but not be limited to, admission
17 of states into membership, noncompliance, and interpretations, revisions or additions to the Agreement.
18 The State and Local Government Advisory Council shall advise and assist the Business and Taxpayer
19 Advisory Council in the functions noted in Section 811.

20
21 **Section 811: BUSINESS AND TAXPAYER ADVISORY COUNCIL**

22 The governing board shall create a Business and Taxpayer Advisory Council from the private sector to
23 advise the governing board on matters pertaining to the administration of the Agreement. These matters
24 shall include, but not be limited to, admission of states into membership, noncompliance, and
25 interpretations, revisions or additions to the Agreement. The Business and Taxpayer Advisory Council
26 shall advise and assist the State and Local Government Advisory Council in the functions noted in
27 Section 810.

1 **ARTICLE IX**

2 **AMENDMENTS AND INTERPRETATIONS**

3
4 **Section 901: AMENDMENTS TO AGREEMENT**

5 Amendments to the Agreement may be brought before the governing board by any member state. The
6 Agreement may be amended by a three-fourths vote of the entire governing board. The governing board
7 shall give the Governor and presiding officer of each house of each member state notice of proposed
8 amendments to the Agreement at least sixty days prior to consideration. The governing board shall give
9 public notice of proposed amendments to the Agreement at least sixty days prior to consideration. The
10 governing board shall provide an opportunity for public comment prior to action on an amendment to
11 the Agreement.

12
13 **Section 902: INTERPRETATIONS OF AGREEMENT**

14 Matters involving interpretation of the Agreement may be brought before the governing board by any
15 member state or by any other person. All interpretations shall require a three-fourths vote of the entire
16 governing board. The governing board shall publish all interpretations issued under this section.
17 Interpretations shall be considered part of the Agreement and shall have the same effect as the
18 Agreement. The governing board shall act on requests for interpretation of the Agreement within a
19 reasonable period of time and under guidelines and procedures as set forth in the governing board's
20 rules. The governing board may determine that it will not issue an interpretation. The governing board
21 shall provide an opportunity for public comment prior to issuing an interpretation of the Agreement.

22
23 **Section 903: DEFINITION REQUESTS**

24 Any member state or any other person may make requests for additional definitions or for
25 interpretations on how an individual product or service fits within a definition. Requests shall be
26 submitted in writing as determined by the governing board. Such requests shall be referred to
27 the Advisory Council created in Section 810 or other group under guidelines and procedures as
28 set forth in the governing board's rules. The entity to which the request was referred shall post
29 notice of the request and provide for input from the public and the member states as directed by

1 the governing board. Within one hundred eighty days after receiving the request, they shall
2 report to the governing board one of the following recommendations:

- 3 A. That no action be taken on the request;
- 4 B. That a proposed amendment to the Library be submitted;
- 5 C. That an interpretation request be submitted; or
- 6 D. That additional time is needed to review the request.

7

8 If either an amendment or an interpretation is recommended, the entity to which the request was
9 referred shall provide the appropriate language as required by the governing board. The
10 governing board shall take action on the recommendation of the entity to which the request was
11 referred at the next meeting of the governing board pursuant to the notice requirements of
12 Section 806. Action by the governing board to approve a recommendation for no action shall be
13 considered the final disposition of the request. Nothing in this paragraph shall prohibit a state
14 from directly submitting a proposed amendment or an interpretation request to the governing
15 board pursuant to Section 901 or Section 902.

1 **ARTICLE X**

2 **ISSUE RESOLUTION PROCESS**

3
4 **Section 1001: RULES AND PROCEDURES FOR ISSUE RESOLUTION**

5 The governing board shall promulgate rules creating an issue resolution process. The rules shall govern
6 the conduct of the process, including the participation by any petitioner, affected state, and other
7 interested party, the disposition of a petition to invoke the process, the allocation of costs for
8 participating in the process, the possible involvement of a neutral third party or non-binding arbitration,
9 and such further details as the governing board determines necessary and appropriate.

10
11 **Section 1002: PETITION FOR RESOLUTION**

12 Any member state or person may petition the governing board to invoke the issue resolution process to
13 resolve matters of:

- 14 A. Membership of a state under Article VIII;
15 B. Matters of compliance under Section 805;
16 C. Possibilities of sanctions of a member state under Section 809;
17 D. Amendments to the Agreement under Section 901;
18 E. Interpretation issues, including differing interpretations among the member states, under Section
19 902; or
20 F. Other matters at the discretion of the governing board.

21
22 **Section 1003: FINAL DECISION OF GOVERNING BOARD**

23 The governing board shall consider any recommendations resulting from the issue resolution process
24 before making its decision, which decision shall, as with all other matters under the Agreement, be final
25 and not subject to further review.

26
27 **Section 1004: LIMITED SCOPE OF THIS ARTICLE**

28 Nothing in this Article shall be construed to substitute for, stay or extend, limit, expand, or
29 otherwise affect, in any manner, any right or duty that any person or governmental body has
30 under the laws of any member state or local government body. This Article is specifically

1 subject to the terms of Article XI and shall not be construed as taking precedence over Article
2 XI.

1 ARTICLE XI

2 RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

3
4 **Section 1101: COOPERATING SOVEREIGNS**

5 This Agreement is among individual cooperating sovereigns in furtherance of their governmental
6 functions. The Agreement provides a mechanism among the member states to establish and
7 maintain a cooperative, simplified system for the application and administration of sales and use
8 taxes under the duly adopted law of each member state.
9

10 **Section 1102: RELATIONSHIP TO STATE LAW**

11 No provision of the Agreement in whole or part invalidates or amends any provision of the law
12 of a member state. Adoption of the Agreement by a member state does not amend or modify any
13 law of the state. Implementation of any condition of the Agreement in a member state, whether
14 adopted before, at, or after membership of a state, must be by the action of the member state. All
15 member states remain subject to Article VIII.
16

17 **Section 1103: LIMITED BINDING AND BENEFICIAL EFFECT**

- 18 A. This Agreement binds and inures only to the benefit of the member states. No person,
19 other than a member state, is an intended beneficiary of this Agreement. Any benefit to a
20 person other than a state is established by the laws of the member states and not by the
21 terms of this Agreement.
- 22 B. Consistent with subsection (A), no person shall have any cause of action or defense under
23 the Agreement or by virtue of a member state's approval of the Agreement. No person
24 may challenge, in any action brought under any provision of law, any action or inaction
25 by any department, agency, or other instrumentality of any member state, or any political
26 subdivision of a member state on the ground that the action or inaction is inconsistent
27 with the Agreement.
- 28 C. No law of a member state, or the application thereof, may be declared invalid as to any
29 person or circumstance on the ground that the provision or application is inconsistent
30 with the Agreement.

1

2 **Section 1104: FINAL DETERMINATIONS**

3 The determinations pertaining to the Agreement that are made by the member states are final
4 when rendered and are not subject to any protest, appeal, or review.

1 ARTICLE XII

2 REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

3

4 **Section 1201: REVIEW OF COSTS AND BENEFITS**

5 The governing board will review costs and benefits of administration and collection of sales and
6 use taxes incurred by states and sellers under the existing sales and use tax laws at the time of
7 adoption of the Agreement and the proposed Streamlined Sales Tax Agreement.

1 APPENDIX A
2 STREAMLINED SALES AND USE TAX AGREEMENT
3 PETITION FOR MEMBERSHIP
4

5 **WHEREAS**, it is in the interest of the private sector and of state and local governments to
6 simplify and modernize sales and use tax administration;

7 **WHEREAS**, such simplification and modernization will result in a substantial reduction in the
8 costs and complexity for sellers of personal property and services in conducting their commercial
9 enterprises;

10 **WHEREAS**, such simplification and modernization will also result in additional voluntary
11 compliance with the sales and use tax laws;

12 **WHEREAS**, such simplification and modernization of sales and use tax administration is best
13 conducted in cooperation and coordination with other states; and

14 **WHEREAS**, the State of _____ levies a sales tax and levies a use tax. "Sales
15 tax" means the tax levied under (CITE SPECIFIC STATUTE) and "use tax" means the tax
16 levied under (CITE SPECIFIC STATUTE).

17 **NOW**, the undersigned representative hereby petitions the governing board of the Streamlined
18 Sales and Use Tax Agreement (or Co-Chairs of the Streamlined Sales Tax Implementing States)
19 for membership into the Agreement.
20
21

22 _____

23 NAME

24 _____

25 TITLE

26 STATE OF _____

1
2
3
4

Appendix B
INDEX OF DEFINITIONS

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1 Appendix C

2 LIBRARY OF DEFINITIONS

3
4 **Part I** Administrative definitions including tangible personal property. Terms included
5 in this Part are core terms that apply in imposing and administering sales and use taxes.

6
7 **Part II** Product definitions. Terms included in this Part are used to exempt items from
8 sales and use taxes or to impose tax on items by narrowing an exemption that otherwise includes
9 these items.

10
11 **Part III** Sales tax holiday definitions. Terms included in this Part are core terms that
12 apply in imposing and administering sales and use taxes during sales tax holidays.

13
14 PART I

15
16 Administrative Definitions

17
18 1. **“Delivery charges”** means charges by the seller of personal property or services for
19 preparation and delivery to a location designated by the purchaser of personal property or
20 services including, but not limited to, transportation, shipping, postage, handling, crating, and
21 packing.

22 A member state may exclude from “delivery charges” the charges for delivery of “direct
23 mail” if the charges are separately stated on an invoice or similar billing document given to
24 the purchaser.

25 If a shipment includes exempt property and taxable property, the seller should allocate the
26 delivery charge by using:

- 27 a. a percentage based on the total sales prices of the taxable property compared
28 to the total sales prices of all property in the shipment; or

1 b. a percentage based on the total weight of the taxable property compared to the
2 total weight of all property in the shipment.

3 The seller must tax the percentage of the delivery charge allocated to the taxable property but
4 does not have to tax the percentage allocated to the exempt property.

5
6 2. **“Direct mail”** means printed material delivered or distributed by United States mail or other
7 delivery service to a mass audience or to addressees on a mailing list provided by the
8 purchaser or at the direction of the purchaser when the cost of the items are not billed directly
9 to the recipients. **“Direct mail”** includes tangible personal property supplied directly or
10 indirectly by the purchaser to the direct mail seller for inclusion in the package containing the
11 printed material. **“Direct mail”** does not include multiple items of printed material delivered
12 to a single address.

13
14 3. **“Lease or rental”** means any transfer of possession or control of tangible personal property
15 for a fixed or indeterminate term for consideration. A lease or rental may include future
16 options to purchase or extend.

17 A. Lease or rental does not include:

- 18 1. A transfer of possession or control of property under a security agreement or deferred
19 payment plan that requires the transfer of title upon completion of the required
20 payments;
- 21 2. A transfer or possession or control of property under an agreement that requires the
22 transfer of title upon completion of required payments and payment of an option price
23 does not exceed the greater of one hundred dollars or one percent of the total required
24 payments; or
- 25 3. Providing tangible personal property along with an operator for a fixed or
26 indeterminate period of time. A condition of this exclusion is that the operator is
27 necessary for the equipment to perform as designed. For the purpose of this
28 subsection, an operator must do more than maintain, inspect, or set-up the tangible
29 personal property.

- 1 B. Lease or rental does include agreements covering motor vehicles and trailers where the
2 amount of consideration may be increased or decreased by reference to the amount
3 realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).
- 4 C. This definition shall be used for sales and use tax purposes regardless if a transaction is
5 characterized as a lease or rental under generally accepted accounting principles, the
6 Internal Revenue Code, the [state commercial code], or other provisions of federal, state
7 or local law.
- 8 D. This definition will be applied only prospectively from the date of adoption and will
9 have no retroactive impact on existing leases or rentals. This definition shall neither
10 impact any existing sale-leaseback exemption or exclusions that a state may have, nor
11 preclude a state from adopting a sale-leaseback exemption or exclusion after the
12 effective date of the Agreement.
- 13
- 14 4. **“Purchase price”** applies to the measure subject to use tax and has the same meaning as
15 sales price.
- 16
- 17 5. **“Retail sale or Sale at retail”** means any sale, lease, or rental for any purpose other than for
18 resale, sublease, or subrent.
- 19
- 20 6. **“Sales price”** applies to the measure subject to sales tax and means the total amount of
21 consideration, including cash, credit, property, and services, for which personal property or
22 services are sold, leased, or rented, valued in money, whether received in money or
23 otherwise, without any deduction for the following:
- 24 A. The seller's cost of the property sold;
- 25 B. The cost of materials used, labor or service cost, interest, losses, all costs of
26 transportation to the seller, all taxes imposed on the seller, and any other expense
27 of the seller;
- 28 C. Charges by the seller for any services necessary to complete the sale, other than
29 delivery and installation charges;
- 30 D. Delivery charges;

1 E. Installation charges;

2 F. The value of exempt personal property given to the purchaser where taxable and
3 exempt personal property have been bundled together and sold by the seller as a
4 single product or piece of merchandise; and

5 G. Credit for any trade-in, as determined by state law.

6 States may exclude from "sales price" the amounts received for charges included in paragraphs
7 (C) through (G) above, if they are separately stated on the invoice, billing, or similar document
8 given to the purchaser.

9 "Sales price" shall not include:

10 A. Discounts, including cash, term, or coupons that are not reimbursed by a third
11 party that are allowed by a seller and taken by a purchaser on a sale;

12 B. Interest, financing, and carrying charges from credit extended on the sale of
13 personal property or services, if the amount is separately stated on the invoice,
14 bill of sale or similar document given to the purchaser; and

15 C. Any taxes legally imposed directly on the consumer that are separately stated on
16 the invoice, bill of sale or similar document given to the purchaser.

17

18 7. **"Tangible personal property"** means personal property that can be seen, weighed,
19 measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible
20 personal property" includes electricity, water, gas, steam, and prewritten computer software.

1 **PART II**

2 **Product Definitions**

3

4 **CLOTHING**

5 **“Clothing”** means all human wearing apparel suitable for general use. The following list
6 contains examples and is not intended to be an all-inclusive list.

7 A. “Clothing” shall include:

- 8 1. Aprons, household and shop;
- 9 2. Athletic supporters;
- 10 3. Baby receiving blankets;
- 11 4. Bathing suits and caps;
- 12 5. Beach capes and coats;
- 13 6. Belts and suspenders;
- 14 7. Boots;
- 15 8. Coats and jackets;
- 16 9. Costumes;
- 17 10. Diapers, children and adult, including disposable diapers;
- 18 11. Ear muffs;
- 19 12. Footlets;
- 20 13. Formal wear;
- 21 14. Garters and garter belts;
- 22 15. Girdles;
- 23 16. Gloves and mittens for general use;
- 24 17. Hats and caps;
- 25 18. Hosiery;
- 26 19. Insoles for shoes;
- 27 20. Lab coats;
- 28 21. Neckties;
- 29 22. Overshoes;
- 30 23. Pantyhose;

- 1 24. Rainwear;
- 2 25. Rubber pants;
- 3 26. Sandals;
- 4 27. Scarves;
- 5 28. Shoes and shoe laces;
- 6 29. Slippers;
- 7 30. Sneakers;
- 8 31. Socks and stockings;
- 9 32. Steel toed shoes;
- 10 33. Underwear;
- 11 34. Uniforms, athletic and non-athletic; and
- 12 35. Wedding apparel.

13 B. "Clothing" shall not include:

- 14 1. Belt buckles sold separately;
- 15 2. Costume masks sold separately;
- 16 3. Patches and emblems sold separately;
- 17 4. Sewing equipment and supplies including, but not limited to, knitting needles,
18 patterns, pins, scissors, sewing machines, sewing needles, tape measures, and
19 thimbles; and
- 20 5. Sewing materials that become part of "clothing" including, but not limited to, buttons,
21 fabric, lace, thread, yarn, and zippers.

22 **"Clothing accessories or equipment"** means incidental items worn on the person or in
23 conjunction with "clothing." "Clothing accessories or equipment" are mutually exclusive of and
24 may be taxed differently than apparel within the definition of "clothing," "sport or recreational
25 equipment," and "protective equipment." The following list contains examples and is not
26 intended to be an all-inclusive list. "Clothing accessories or equipment" shall include:

- 27 A. Briefcases;
- 28 B. Cosmetics;
- 29 C. Hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
- 30 D. Handbags;

- 1 E. Handkerchiefs;
- 2 F. Jewelry;
- 3 G. Sun glasses, non-prescription;
- 4 H. Umbrellas;
- 5 I. Wallets;
- 6 J. Watches; and
- 7 K. Wigs and hair pieces.

8 **"Protective equipment"** means items for human wear and designed as protection of the wearer
9 against injury or disease or as protections against damage or injury of other persons or property
10 but not suitable for general use. "Protective equipment" are mutually exclusive of and may be
11 taxed differently than apparel within the definition of "clothing," "clothing accessories or
12 equipment," and "sport or recreational equipment." The following list contains examples and is
13 not intended to be an all-inclusive list. "Protective equipment" shall include:

- 14 A. Breathing masks;
- 15 B. Clean room apparel and equipment;
- 16 C. Ear and hearing protectors;
- 17 D. Face shields;
- 18 E. Hard hats;
- 19 F. Helmets;
- 20 G. Paint or dust respirators;
- 21 H. Protective gloves;
- 22 I. Safety glasses and goggles;
- 23 J. Safety belts;
- 24 K. Tool belts; and
- 25 L. Welders gloves and masks.

26 **"Sport or recreational equipment"** means items designed for human use and worn in
27 conjunction with an athletic or recreational activity that are not suitable for general use. "Sport
28 or recreational equipment" are mutually exclusive of and may be taxed differently than apparel
29 within the definition of "clothing," "clothing accessories or equipment," and "protective

1 equipment.” The following list contains examples and is not intended to be an all-inclusive list.

2 “Sport or recreational equipment” shall include:

- 3 A. Ballet and tap shoes;
- 4 B. Cleated or spiked athletic shoes;
- 5 C. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf;
- 6 D. Goggles;
- 7 E. Hand and elbow guards;
- 8 F. Life preservers and vests;
- 9 G. Mouth guards;
- 10 H. Roller and ice skates;
- 11 I. Shin guards;
- 12 J. Shoulder pads;
- 13 K. Ski boots;
- 14 L. Waders; and
- 15 M. Wetsuits and fins.

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17 **COMPUTER RELATED**

18 “**Computer**” means an electronic device that accepts information in digital or similar form and
19 manipulates it for a result based on a sequence of instructions.

20 “**Computer software**” means a set of coded instructions designed to cause a “computer” or
21 automatic data processing equipment to perform a task.

22 “**Delivered electronically**” means delivered to the purchaser by means other than tangible
23 storage media.

24 “**Electronic**” means relating to technology having electrical, digital, magnetic, wireless, optical,
25 electromagnetic, or similar capabilities.

26 “**Load and leave**” means delivery to the purchaser by use of a tangible storage media where the
27 tangible storage media is not physically transferred to the purchaser.

28 “**Prewritten computer software**” means “computer software,” including prewritten upgrades,
29 which is not designed and developed by the author or other creator to the specifications of a
30 specific purchaser. The combining of two or more “prewritten computer software” programs or

1 prewritten portions thereof does not cause the combination to be other than “prewritten computer
2 software.” “Prewritten computer software” includes software designed and developed by the
3 author or other creator to the specifications of a specific purchaser when it is sold to a person
4 other than the specific purchaser. Where a person modifies or enhances “computer software” of
5 which the person is not the author or creator, the person shall be deemed to be the author or
6 creator only of such person’s modifications or enhancements. “Prewritten computer software” or
7 a prewritten portion thereof that is modified or enhanced to any degree, where such modification
8 or enhancement is designed and developed to the specifications of a specific purchaser, remains
9 “prewritten computer software;” provided, however, that where there is a reasonable, separately
10 stated charge or an invoice or other statement of the price given to the purchaser for such
11 modification or enhancement, such modification or enhancement shall not constitute “prewritten
12 computer software.”

13 A member state may exempt “prewritten computer software” “delivered electronically” or by
14 “load and leave.”

15

16 **FOOD AND FOOD PRODUCTS**

17 **“Alcoholic Beverages”** means beverages that are suitable for human consumption and contain
18 one-half of one percent or more of alcohol by volume.

19 **“Candy”** means a preparation of sugar, honey, or other natural or artificial sweeteners in
20 combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars,
21 drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no
22 refrigeration.

23 **“Dietary supplement”** means any product, other than “tobacco,” intended to supplement the
24 diet that:

- 25 A. Contains one or more of the following dietary ingredients:
 - 26 1. A vitamin;
 - 27 2. A mineral;
 - 28 3. An herb or other botanical;
 - 29 4. An amino acid;
 - 30 5. A dietary substance for use by humans to supplement the diet by increasing the total
31 dietary intake; or

1 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
2 described in above; and

3 B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not
4 intended for ingestion in such a form, is not represented as conventional food and is not
5 represented for use as a sole item of a meal or of the diet; and

6 C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts"
7 box found on the label and as required pursuant to 21 C.F.R § 101.36.

8 **“Food and food ingredients”** means substances, whether in liquid, concentrated, solid, frozen,
9 dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed
10 for their taste or nutritional value. “Food and food ingredients” does not include “alcoholic
11 beverages” or “tobacco.” A member state may exclude “candy,” “dietary supplements” and
12 “soft drinks” from this definition, which items are mutually exclusive of each other.

13 Notwithstanding the foregoing requirements of this definition or any other provision of the
14 Agreement, a member state may maintain its tax treatment of food in a manner that differs from
15 the definitions provided herein, provided its taxation or exemption of food is based on a
16 prohibition or requirement of that state’s Constitution that exists on the effective date of the
17 Agreement.

18 **“Food sold through vending machines”** means food dispensed from a machine or other
19 mechanical device that accepts payment.

20 **“Prepared food”** means:

21 A. Food sold in a heated state or heated by the seller;

22 B. Two or more food ingredients mixed or combined by the seller for sale as a single item;
23 or

24 C. Food sold with eating utensils provided by the seller, including plates, knives, forks,
25 spoons, glasses, cups, napkins, or straws. A plate does not include a container or
26 packaging used to transport the food.

27 “Prepared food” in B does not include food that is only cut, repackaged, or pasteurized by the
28 seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring
29 cooking by the consumer as recommended by the Food and Drug Administration in chapter 3,
30 part 401.11 of its Food Code so as to prevent food borne illnesses.

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The following items may be taxed differently than “prepared food” and each other, if sold without eating utensils provided by the seller, but may not be taxed differently than the same item when classified under “food and food ingredients.”

1. Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
2. Food sold in an unheated state by weight or volume as a single item.
3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

Substances within “food and food ingredients” may be taxed differently if sold as “prepared food.” A state shall tax or exempt from taxation “candy,” dietary supplements,” and “soft drinks” that are sold as “prepared food” in the same manner as it treats other substances that are sold as “prepared food.”

“Soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

“Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

HEALTH-CARE

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages:”

- A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or
- B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- C. Intended to affect the structure or any function of the body.

A member state may independently:

- 1 A. Limit the definition of “drug” to human use (as opposed to both human and animal use)
2 in the administration of its exemption;
- 3 B. Draft its exemption for “drug” to specifically add insulin and/or medical oxygen so that
4 no prescription is required, even if a state requires a prescription under its exemption for
5 drugs;
- 6 C. Determine the taxability of the sales of drugs and prescription drugs to hospitals and
7 other medical facilities;
- 8 D. Determine the taxability of free samples of drugs; and
- 9 E. Determine the taxability of bundling taxable and nontaxable drug, if uniform treatment
10 of bundled transactions is not otherwise defined in the Agreement.

11 **“Durable medical equipment”** means equipment including repair and replacement parts for
12 same, but does not include “mobility enhancing equipment,” which:

- 13 A. Can withstand repeated use; and
- 14 B. Is primarily and customarily used to serve a medical purpose; and
- 15 C. Generally is not useful to a person in the absence of illness or injury; and
- 16 D. Is not worn in or on the body.

17 A member state may limit its exemption to “durable medical equipment” used for home use only.

18 A member state may limit the application of this definition by requiring a “prescription,” or limit
19 an exemption based on Medicare or Medicaid payments or reimbursements.

20 **“Grooming and hygiene products”** are soaps and cleaning solutions, shampoo, toothpaste,
21 mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items
22 meet the definition of “over-the-counter-drugs.”

23 **“Mobility enhancing equipment”** means equipment including repair and replacement parts to
24 same, but does not include “durable medical equipment,” which:

- 25 A. Is primarily and customarily used to provide or increase the ability to move from one
26 place to another and which is appropriate for use either in a home or a motor vehicle;
27 and
- 28 B. Is not generally used by persons with normal mobility; and
- 29 C. Does not include any motor vehicle or equipment on a motor vehicle normally provided
30 by a motor vehicle manufacturer.

1 A member state may limit the application of this definition by requiring a “prescription,” or limit
2 an exemption based on Medicare or Medicaid payments or reimbursements.

3 **“Over-the-counter-drug”** means a drug that contains a label that identifies the product as a drug
4 as required by 21 C.F.R. § 201.66. A member state may exclude “grooming and hygiene
5 products” from this definition. The “over-the-counter-drug” label includes:

- 6 A. A “Drug Facts” panel; or
- 7 B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the
8 compound, substance or preparation.

9 **“Prescription”** means an order, formula or recipe issued in any form of oral, written, electronic,
10 or other means of transmission by a duly licensed practitioner authorized by the laws of the
11 member state.

12 **“Prosthetic device”** means a replacement, corrective, or supportive device including repair and
13 replacement parts for same worn on or in the body to:

- 14 A. Artificially replace a missing portion of the body;
- 15 B. Prevent or correct physical deformity or malfunction; or
- 16 C. Support a weak or deformed portion of the body.

17 A member state may exclude any or all of the following from the definition of “prosthetic
18 device:”

- 19 A. Corrective eyeglasses;
- 20 B. Contact lenses;
- 21 C. Hearing aids; and
- 22 D. Dental prosthesis.

23 A member state may limit the application of this definition by requiring a “prescription,” or limit
24 an exemption based on Medicare or Medicaid payments or reimbursements.

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PART III
Sales Tax Holiday Definitions

"Eligible property" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in a member state.

"Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

"Rain check" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004)

August 16, 2004

The Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004) held its first meeting on August 16, 2004.

The members of the Joint Subcommittee are: Delegate Timothy D. Hugo, Chairman; Delegate R. Lee Ware, Jr.; Delegate Lynwood W. Lewis, Jr.; Senator Emmett W. Hanger, Jr.; Senator Charles J. Colgan; Mr. John Backus; Mr. Steve DeBianco; Mr. Bill Frischling; Mr. Lee Goodman; The Honorable John M. Bennett, ex officio; The Honorable George C. Newstrom, ex officio; and The Honorable Michael J. Schewel, ex officio.

The first order of business was the nomination and election of Delegate Timothy D. Hugo as Chairman, and Senator Emmett W. Hanger, Jr. Vice Chairman.

The meeting began with the Division of Legislative Services ("DLS") providing an overview of the Streamlined Sales and Use Tax Agreement ("SSUTA") that was approved by state representatives on November 12, 2002. SSUTA is a multistate agreement with the objective of simplifying the administration of sales and use taxes. Under the agreement, a remote vendor (a vendor with no physical presence in a state) who voluntarily elects to participate in SSUTA is required to remit use tax on goods and services sold to customers in states in which the vendor does not have nexus for purposes of tax collection responsibilities.

SSUTA was crafted as a result of working group meetings that included interested businesses and representatives of 42 states and the District of Columbia. Virginia first became involved in the working group meetings in 2002. A provision of SSUTA provides that the multistate agreement will become effective when at least ten states comprising at least twenty percent of the population of states imposing sales taxes are in substantial compliance with the agreement. It is anticipated that these requirements will be met on October 1, 2005, and the multistate agreement will then become effective. DLS related that, while SSUTA is a voluntary agreement states and vendors may join, there have been efforts at the Congressional level to enact laws that adopt most of the elements of SSUTA but that also permit state and local governments to mandate or require remote vendors to collect and remit use tax.

DLS concluded its presentation by discussing issues under SSUTA that may impact states that join the agreement. These issues were identified as the requirement under the agreement that participating states maintain ongoing substantial compliance with the agreement; the need for states to adopt

procedures to identify potential legislation that may conflict with the terms of the agreement; procedures for annual recertification of substantial compliance to the governing body of SSUTA; administrative costs, including a temporary increase in the discount paid to vendors voluntarily participating in the agreement; and, if the Commonwealth were to adopt SSUTA, the likely changes that would be required to its sales and use tax laws to bring them into substantial compliance with the agreement.

Next, a representative from the Northern Virginia Technology Council presented some questions and concerns in regard to SSUTA. The Council has five primary concerns: SSUTA is a work in progress with potential changes still to be made and since the agreement has yet to become effective there is very little to evaluate; if the provisions of SSUTA were to become mandatory, there could be very costly compliance burdens on technology and other service providers; the scope of SSUTA extends beyond E-retailers; costs and benefits to Virginia are still unknown; and Virginia's comparative advantage in growing and attracting technology companies would erode, nationally and internationally. As Virginia residents are subject to use tax on goods purchased from remote vendors, the Council recommended that Virginia focus on enforcing the current tax collection laws to bolster revenues.

Finally, a representative from the National Retail Federation ("NRF") addressed the joint subcommittee and encouraged the joint subcommittee to recommend that Virginia become a participating state in SSUTA. NRF believes that the ability of remote vendors to sell goods without having to charge use tax, especially given the proliferation of sales of goods over the Internet, places "main street" vendors (those not selling over the Internet or in interstate commerce) at an unfair competitive disadvantage. Because main street vendors must collect sales tax, it is difficult for them to compete with remote vendors who do not have to collect and remit use tax on the same goods and services. NRF believes it is appropriate that remote vendors collect and remit use tax as they also benefit from the transportation and police services provided by the states in which their customers are located. For those states that comply with the provisions of SSUTA, NRF stated that it is appropriate for Congress to authorize such states to require remote vendors to collect and remit use tax. NRF also believes that the burdens placed upon retailers in collecting sales and use taxes should be eliminated through the full reimbursement of administrative costs by states.

The Chairman and Vice-Chairman of the HJR 176 joint subcommittee will meet to determine a meeting date and an agenda for the next joint subcommittee meeting.

Web address - <http://dls.state.va.us/GROUPS/HJR176/MEETINGS.HTM>

Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004)

October 4, 2004

The Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004) held its third meeting on October 4, 2004.

The meeting started with the Division of Legislative Services ("DLS") responding to several follow-up questions from the last meeting. Many of the questions from the last meeting involved requests for information in regard to Virginia's sales and use tax. DLS staff reported that the vendor discount paid to merchants for collecting Virginia sales and use tax was \$38.4 million in 1995 and \$56.9 million in 2004. Total retail sales subject to Virginia's sales and use tax grew from \$47 billion in 1993 to \$71 billion in 2002, which equaled an average annual growth of 4.7 percent. Actual state and local sales and use tax collections grew from \$2.3 billion in 1994 to \$3.3 billion in 2003, which equaled an average annual growth of 4.0 percent. Finally, the number of retail jobs in Virginia grew from 362,715 in 1994 to 403,875 in 2003, which equaled an average annual growth of 1.2 percent.

DLS staff also provided the members of the joint subcommittee with information on the annual costs of economic development incentive grants and tax preferences (See hand-outs from October 4 meeting).

Next, representatives of the Direct Marketers Association ("DMA") addressed the joint subcommittee. DMA stated that in 2003 there were 452,000 direct marketing jobs in Virginia, and the number of direct marketing jobs in the Commonwealth is estimated to be 527,000 by 2007. DMA stated that it believes it would be bad public policy for the Commonwealth to join the Streamlined Sales and Use Tax Agreement ("the Agreement"). DMA believes that the Agreement will not lead to uniformity in sales and use tax laws and will result in a non-elected governing body having sovereignty over Virginia's sales and use tax laws. DMA reported that if small businesses were required to collect use tax for states in which they have no nexus, such businesses would incur administrative compliance costs equal to 87 percent of the actual amount of the tax collected; compliance costs incurred by medium-sized companies under a mandatory use tax collection system would equal 48 percent of the actual amount of the tax collected; and compliance costs incurred by large companies under a mandatory use tax collection system would equal 14 percent of the actual amount of the tax collected.

The next presentation was made by Dr. Thomas Lenard of The Progress & Freedom Foundation. Dr. Lenard presented three general conclusions: (i) only a

small portion of the \$1.15 trillion in remote sales would be subject to use tax for states joining the Agreement; (ii) under a voluntary agreement for the collection of use tax on remote sales, large sales would shift to states that currently do not impose a sales and use tax because consumers are sensitive to tax differentials; and (iii) the benefits (in terms of economic activity, job growth, and tax revenues) of not joining a mandatory use tax collection system or opting out of such mandatory system are potentially substantial.

The final presentation was made by the Virginia Department of Taxation ("Tax"). Tax reported that sales and use tax assessments from audits resulted in \$75.6 million in assessments for Fiscal Year 2004. The great majority of these assessments related to assessments imposed upon businesses for use tax. Tax stated that Virginia would realize significant additional use tax revenue only under a mandatory tax collection system that would require remote vendors with no nexus to collect and remit use tax to Virginia. The Agreement, in contrast, is a voluntary Agreement under which a remote vendor can participate and voluntarily agree to collect and remit use tax to states, including Virginia, in which the vendor has no nexus. Tax also stated that if Virginia were to conform its sales and use tax laws to the terms of the Agreement, this would allow Virginia to have a "seat at the table" for purposes of future changes or modifications to the Agreement.

Next Meeting

The next meeting of the joint subcommittee will be held on October 19 at 10:00 a.m. in House Room D of the General Assembly Building.

Web address - <http://dls.state.va.us/GROUPS/HJR176/MEETINGS.HTM>

Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004)

October 19, 2004

The Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004) held its third meeting on October 19, 2004.

The meeting started with a brief presentation by Barry Hawkins on behalf of the Virginia Petroleum, Convenience, and Grocery Association. He raised concerns that the following three practices of his member organizations may be negatively impacted under the Streamlined Sales and Use Tax Agreement (SSUTA):

1. Buy downs -- Under this practice, a manufacturer rebates a certain set amount to the retailer for each item of a particular product that is sold. The concern is that the rebate may be included in calculating the sales tax under the SSUTA even though the customer did not pay it, and is unaware that it is being paid.
2. Shelf space -- Some suppliers pay the retailer a certain amount for premium shelf space. The Association opposes any provision under the SSUTA that might impose a tax on these activities.
3. Advertising Cooperatives -- Some suppliers provide the retailer with a credit on future purchases in return for advertising the suppliers' brands. The Association opposes any provision under the SSUTA that might impose a tax on advertising cooperatives.

Next, Mark Haskins from Virginia Department of Taxation ("Tax") addressed provided information on follow-up issues from the previous meeting. At the beginning of his presentation he was asked by Senator Hanger to respond to the concerns of the first speaker about "buy downs." Mr. Haskins stated that this issue is under active debate by the member states of the SSUTA and that a final determination may be reached at their next meeting in mid-November

Mr. Haskins then presented information on two follow-up issues: (i) additional data regarding audits performed by Tax, and (ii) information regarding the destination sourcing requirement under SSUTA (i.e. the SSUTA requires that all sales taxes (interstate and intrastate) be paid to the locality where the goods are delivered, whereas Virginia, and several other states, require that intrastate sales tax be paid to the locality where the purchase is made).

Mr. Haskins presented a revenue and statistical summary of audit collections for Fiscal Year 01 and Fiscal Year 02 (see handouts on this site for the October 19th

meeting). He set forth various criteria for selecting audit candidates and emphasized that efforts are made to have auditors concentrate on the types of audits that result in a higher measure of assessments per hour of audit time. He said that the vast majority of audits are of businesses, and not individual consumers.

Mr. Haskins then provided information on the destination sourcing issue under SSUTA. He said that if Virginia were to adopt the destination sourcing requirement under the SSUTA, that it alone would not alter the total sales tax revenue for the Commonwealth, and would not alter the total amount going to localities, but that it would alter the allocation among localities for their local tax (i.e. some localities would be winners and some would be losers.) He spoke of what other states have done that have an origin-based intrastate sourcing rule like Virginia. For example, Texas and Washington have conformed to the SSUTA except for the sourcing requirement. Iowa, Kansas, Ohio, Tennessee, and Utah all have changed their sourcing requirements to comport with the SSUTA and all have had to delay the change because of in-state vendor complaints.

Mr. Haskins then provided an overview of the Washington State Department of Revenue's study regarding the impact that would occur in Washington should Washington change its sourcing rule to comport with the SSUTA (see handouts on this site of the October 19th meeting). Some of the results of this study reflect that: (i) almost all counties gain revenues, while two-thirds of the cities gain; (ii) cities that lose revenues generally contain businesses with warehouses or retail stores from which deliveries are made, or serve as a local business hub to a larger community; and (iii) jurisdictions that gain revenues have a relatively high population compared to their business base.

Steve DelBianco (a citizen member of the Joint Subcommittee) raised the issue of whether one potential resolution to the "sourcing issue" (to have one sourcing rule for intrastate sales and another for interstate sales) would run afoul under the Interstate Commerce Clause of the Constitution of the United States. Mr. DelBianco then presented other follow-up information from the previous meeting regarding the thousands of Virginia small businesses that do substantial business on "E-Bay."

Next on the agenda was Senator Hanger who provided his perspectives on remote sales tax collections. He recounted the history of how he came to be involved with SSUTA, dating back to his involvement in the Commission on the Future of Virginia's Cities, and his interest in examining the tax structure in Virginia in general. He had followed with interest the work and the report of the Commission on Virginia's State and Local Tax Structure for the 21st Century, a two-year study, whose membership was comprised solely of citizens (House Document 22 (2001)). One of the many recommendations of this Commission was to have Virginia participate in the SSUTA. Out of concern that the results of

this Commission would lay dormant, he was successful in getting a Joint Subcommittee of the General Assembly established to carry forward with the recommendations of the citizens' Commission (SJR 387 and HJR 685 (2001), and SJR 347 (2003)) . That Joint Subcommittee looked at the total state and local tax structure, and, like the citizens' Commission, recommended to continue working with the national Streamlined Sales Tax Project. Senator Hanger has been a part of the official Virginia legislative delegation participating in the SSUTP since the delegation's inception in 2002.

In the 2004 Session, Senator Hanger introduced legislation to conform Virginia's sales and use tax laws to the SSUTA, except for the destination based sourcing requirement under the SSUTA (SB 514). The legislation passed the Senate but was carried over by the House Finance Committee.

Senator Hanger addressed the sourcing rule issue by saying that in the short run, if Virginia can find a way to comport with the SSUTA without changing its sourcing rule then he would support that. However, he stated that, independent of the SSUTA, Virginia's sourcing rule is one of many aspects of the tax system that ought to be examined. He said that the current sourcing rule already creates "winners and losers" among localities that in many instances may not reflect sound public policy.

Senator Hanger spoke briefly on the Council on State Taxation's evaluation of the SSUTA. He said that the document helps to put in perspective the original goals of the SSUTA. He asked that staff provide a copy of this evaluation to each member.

As a general matter, he said that, compared with most other states, the uniformity and simplicity inherent in Virginia's current sales and use tax laws makes conformity with the SSUTA a much easier task, with most changes being technical in nature.

Chairman Hugo then invited any members who so desired to present any proposed findings and recommendations that the Joint Subcommittee might consider in arriving at its ultimate recommendations at its final meeting next month. Steve DelBianco was the only member to present proposed findings and recommendations (see handouts on this site of the October 19th meeting).

Mr. DelBianco provided an overview of his written draft of proposed findings and recommendations. His findings are divided into the following five subheadings:

1. Sales & Use Tax Compliance -- These findings relate to the need to analyze carefully the net additional revenue that Virginia may receive through a national, mandatory program as part of an overall cost-benefit analysis that should precede any final decision regarding conforming Virginia's laws to the SSUTA.

2. **Costs and Burdens of Sales Tax Collections Imposed Upon Virginia Businesses** -- These findings relate to the costs to vendors in collecting sales and use taxes under current laws, and the additional costs that may come under a national, mandatory program.

3. **Increase in Taxes Collected from Virginia Consumers** -- These findings relate to the additional taxes that would be paid by Virginia consumers to other states under a national, mandatory program.

4. **Preserving Virginia's Competitive Economic Position** -- These findings relate to whether Virginia would gain economic development advantages by staying out of a national, mandatory program, assuming such program contained an "opt-out" provision.

5. **Important Unknowns About SSUTA** -- These findings list the factors surrounding SSUTA that are still unknown, such as the additional cost of collection on vendors, and the amount of additional sales taxes that would be paid by Virginia consumers.

Mr. DelBianco's suggested recommendations include the following:

1. Virginia should continue to monitor and influence the SSUTA debate through its multiple roles—as a Participating State in the Streamlined Sales Tax Project, Governor Warner's chairmanship of the National Governors Association, and many Virginia Legislators who participate in the National Conference of State Legislatures, including Senator Hanger's leadership on NCSL's task force on remote sales taxation.

2. Virginia should continue to monitor and influence the SSUTA debate through its multiple roles—as a Participating State in the Streamlined Sales Tax Project, Governor Warner's chairmanship of the National Governors Association, and many Virginia Legislators who participate in the National Conference of State Legislatures, including Senator Hanger's leadership on NCSL's task force on remote sales taxation. Virginia representatives to these organizations should advance the Commonwealth's interest in the SSUTA and in federal legislation by advocating policies beneficial to the Commonwealth such as:

(i) origin-based sourcing on all sales, with no discrimination between online and offline retailers or between interstate and intrastate commerce;

(ii) a broad prohibition against taxation of electronically delivered services, software downloads, online content, and Internet access services;

(iii) compensation for all retailers to cover substantially all reasonable costs of collection as a condition of any state's participation;

(iv) explicit protections against multiple sales tax audits;

(v) changes to federal SSUTA legislation *to allow a voluntary interstate tax collection compact instead of a national mandate* in order to protect Virginia's tax sovereignty and ability to compete for economic development prospects.

3. Because of too many unknowns surrounding SSUTA, including whether Virginia would be a net gainer or loser, Virginia's General Assembly should not consider adoption of SSUTA in its 2004-2005 legislative session.

There was a brief discussion by the Joint Subcommittee of Mr. DeBianco's proposals. It was agreed that the final proposal should also recommend that the Virginia Department of Taxation also study the fiscal impact on localities that would result under a destination-based sourcing rule. There was consensus that Mr. DeBianco's proposal would be one of the working documents from which the Joint Subcommittee will develop its final proposals at the next meeting.

Next Meeting

The members will be polled for the date of the next meeting of the joint subcommittee, which will occur sometime in the last two weeks of November. The meeting date will be posted once it has been established.

Web address - <http://dls.state.va.us/GROUPS/HJR176/MEETINGS.HTM>

Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004)

November 23, 2004

The Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth (HJR 176 - 2004) held its final meeting on November 23, 2004. Nine voting members of the joint subcommittee were present.

The joint subcommittee met to consider the findings and recommendations of the joint subcommittee. Mr. Steve DelBianco, a member of the joint subcommittee, submitted proposed findings and recommendations.

The joint subcommittee adopted Mr. DelBianco's proposed findings and recommendations with one technical change. These findings and recommendations were adopted by a voice vote with one dissenting vote cast. No other comprehensive findings or recommendations were presented at the meeting.

The findings and recommendations of the joint subcommittee as adopted by the joint subcommittee on November 23 (without the approved technical correction) can be found at the following address:

Web address - <http://dls.state.va.us/GROUPS/HJR176/MEETINGS.HTM>

Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth

HOUSE JOINT RESOLUTION NO. 176 (2004)

<http://dls.state.va.us/HJR176.HTM>

August 16, 2004

10:00 a.m.

House Room D, General Assembly Building
Richmond, Virginia

Agenda

1. Call to order and election of chairman and vice-chairman.
2. Opening remarks of chairman, vice-chairman, and other joint subcommittee members.
3. Streamlined Sales Tax Project issues.
 - *Division of Legislative Services*
4. Business perspectives on remote sales tax collection.
 - *Northern Virginia Technology Council, Mr. Josh Levi*
 - *National Retail Federation, Ms. Maureen Riehl*
5. Joint subcommittee discussion of work plan and future meetings.
6. Other business.
7. Adjournment.

MEMBERS

The Honorable R. Lee Ware, Jr.
The Honorable Timothy D. Hugo
The Honorable Lynwood W. Lewis, Jr.
The Honorable Emmett W. Hanger, Jr.
The Honorable Charles J. Colgan
Mr. John Backus

Mr. Steve DelBianco
Mr. Bill Frischling
Mr. Lee Goodman
The Honorable John M. Bennett
The Honorable George C. Newstrom
The Honorable Michael J. Schewel

STAFF

David A. Rosenberg, Senior Attorney, Division of Legislative Services
Mark J. Vucci, Senior Attorney, Division of Legislative Services

**DEPARTMENT OF TAXATION
2004 Fiscal Impact Statement**

1. **Patron** Emmett W. Hanger, Jr.

2. **Bill Number** SB 514

3. **Committee** House Finance

House of Origin:
 Introduced
 Substitute
 Engrossed

4. **Title** Retail Sales and Use Tax: Streamlined
Sales and Use Tax

Second House:
 In Committee
 Substitute
 Enrolled

5. **Summary/Purpose:**

This bill would conform the Virginia Retail Sales and Use Tax Act to the provisions of the National Streamlined Sales and Use Tax Agreement.

This bill would be effective July 1, 2006.

6. **Fiscal Impact Estimates are:** Unknown. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

This bill would require changes to the Department's systems; however, the degree of change and the costs cannot be determined at this time. Over the next 12 months as the issues continue to evolve at the national level and as the Department embarks on extensive discussions with the Virginia business community on how best to implement the legislation, the Department will develop cost estimates.

Until such time as Congress requires out-of-state vendors to register and collect sales and use taxes, any additional revenue would come from vendors who voluntarily register and file. It is impossible to determine the amount of revenue that will be received from voluntary registrants. In order for Virginia to benefit from filers who voluntarily come forward under the terms of the agreement adopted by the SSTP, or to benefit for any future Congressional action, Virginia must conform its sales and use tax laws to the terms of the agreement. These conforming changes would result in additional General Fund, Transportation Trust Fund and Local revenue. While the amount is unknown, it potentially significant and would first affect Fiscal Year 2007 revenues.

9. **Specific agency or political subdivisions affected:**

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Streamlined Sales Tax Background

In the United States Supreme Court decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the court determined that the Commerce Clause barred a state from requiring an out-of-state mail-order company to collect use tax on goods sold to customers located within the state because the company had no outlets, sales representatives, or significant property in the state. In *Quill*, the court determined that only Congress has the authority to require out-of-state vendors, without a physical presence in a state, to register and collect that state's tax. In reaction to this decision and in an attempt to create a level playing field whereby out-of-state vendors and in-state vendors are both operating under the same tax rules, 40 states and the District of Columbia have come together through the Streamlined Sales Tax Project (SSTP) and have endorsed the concepts embodied in the national Streamlined Sales and Use Tax Agreement.

The SSTP originated as a cooperative effort between the National Conference of State Legislators, the Federation of Tax Administrators, and the National Governor's Association, with significant involvement from the private sector. The objective of the project is to make it easier for multistate retailers to collect state sales tax in both in-state and out-of-state transactions.

The agreement seeks to improve the sales and use tax administration systems used by the states through:

- State level administration of sales and use tax collections.
- Uniformity in the state and local tax bases.
- Uniformity of major tax base definitions.
- Central, electronic registration system for all member states.
- Simplification of state and local tax rates.
- Uniform sourcing rules for all taxable transactions.
- Simplified administration of exemptions.
- Simplified tax returns.
- Simplification of tax remittances.
- Protection of consumer privacy.

In order for a state to benefit from filers who voluntarily come forward under the terms of the agreement adopted by the SSTP, or to benefit for any future Congressional action, a state must conform its sales and use tax laws to the terms of the Agreement adopted by the SSTP on November 12, 2002.

Virginia's consistency with the agreement

In many ways, Virginia's sales tax law is more consistent with the SSTP objectives than some states. Virginia's sales tax law already meets three of the important requirements under the SSTP agreement:

- State level administration of sales and use tax.

Virginia's sales tax is centrally administered by the Department of Taxation. All registrations, payments, rules and regulations, and audits are done by the Department.

- Uniformity in state and local tax bases.

The base upon which the tax is applied (or not applied) is uniform. In Virginia, unlike some other states, the same items are either taxable or exempt for purposes of both the state and the local sales tax. The only exception under current law is fuel for domestic consumption. Home heating fuels are exempt from the state sales tax; however, the local exemption is permissive.

- Simplification of state and local tax rates.

Unlike most other states, Virginia's 1% local tax rate is applied by all localities statewide.

Changes necessary for Virginia to conform to SSTP agreement

Virginia's ability to continue to set sales tax policy will be preserved, even if Virginia conforms its sales tax laws to the terms of the agreement. The agreement requires that states must adopt uniform definitions and procedures. However, states will independently determine the taxability of transactions and items based on uniform definitions. However, conformity to the agreement, will require some changes to Virginia's law.

- Revised definitions for items such as food for home consumption and nonprescription drugs.

The definition adopted under the agreement does not use the same definition for "food for home consumption" that is used under Virginia law. The change in definitions will result in minor changes in the types of food or food products taxed at a lower rate. The same is true for the change in the definition from nonprescription drugs to over-the-counter drugs that would qualify for the Virginia exemption.

- Repeal of partial exemption for maintenance contracts and commercial modular buildings.

Since 1996, Virginia has taxed maintenance contracts that provide both for services and tangible personal property at 50% of the value of the contract. Similarly, since 2000, Virginia has taxed certain modular buildings at 60% of their value. These partial exemptions appear to conflict with the SSTP agreement requirements and are being repealed.

- Exclusion from some administrative requirements unique to Virginia sales tax dealers for volunteer registrants.

In order not to subject voluntary registrants who come forward under the terms of the agreement, certain administrative requirements related to registration, filing, penalties and dealer discount are being revised.

- Revision of local meals tax definition of food to be consistent with revised sales tax definition of food.

To clarify that the same food and food items will be subject to the local meals tax as will be subject to the retail sales tax, the definition of food is being amended for purposes of the local meals tax.

Sourcing

The one area where Virginia is not conforming to the agreement is related to the sourcing for purposes of the local sales tax. This is being done to preserve the status quo for Virginia dealers and limit the shifting of local sales tax revenue. Under the terms of the agreement, all sales, both interstate and intrastate, would be sourced to the locality where the goods are destined. This would require Virginia to source the 1 penny local sales tax to the locality of use or delivery, instead of the locality of the sale. Making this conforming change would impose significant burdens on in-state dealers and shift revenue between localities. Several states that have changed their local sourcing rules have encountered significant problems and resistance from in-state dealers in trying to implement a change in local sourcing. Ohio and Kansas, which adopted the "destination" sourcing rules, have both delayed implementation of this change due to concerns from local vendors. Texas and Washington have adopted the other requirements of the SSTP agreement, without the sourcing rules.

This bill would follow the approach taken by Texas and Washington and adopt the agreement terms without the sourcing change. Because this bill has an effective date of July 1, 2006, Virginia would have time to determine whether the issue can be renegotiated among the states.

cc : Secretary of Finance

Date: 2/24/2004 mch

Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth

Streamlined Sales Tax Agreement: Items for Consideration

1

Current Legal Landscape

- **States are prohibited from requiring out-of-state vendors to collect and remit use tax, *Quill Corp. v. North Dakota*, (1992).**
- **A vendor who has physical presence can be required to collect the tax (e.g., employees working in the state, place of business in the state, delivery by company-owned trucks).**
- **Persons selling over the Internet, by catalogue, or through the mail, with no physical presence, cannot be required to collect use tax.**

2

- **In March of 2000, several states began to meet in an effort to devise a uniform sales and use tax administrative system.**
- **If simplification of the collection of sales and use taxes can be achieved, some out-of-state vendors might voluntarily participate in a multi-state simplification agreement and agree to remit tax on remote sales.**

- **Forty-two states and the District of Columbia have been meeting to develop a voluntary uniform sales and use tax administrative system.**
- **Virginia's delegation joined the Streamlined Sales Tax Project (SSTP) in 2002.**
- **There have been efforts at the federal level to enact laws permitting governments to require out-of-state vendors to collect and remit use tax.**

- **The Streamlined Sales and Use Tax Agreement (SSUTA) was approved on November 12, 2002.**
- **The Agreement is effective when at least 10 states comprising at least 20 percent of the population of all states imposing state sales taxes have been found to be in compliance with the Agreement.**
- **Twenty-one states have enacted all or part of the Agreement. Nineteen of these states comprising more than 20 percent of the population are near compliance.**

5

- **This presentation focuses only on issues arising under SSUTA.**
- **SSUTA issues can be categorized as follows:**
 1. **What is substantial compliance.**
 2. **Standards for future sales tax legislation.**
 3. **Annual recertification of compliance.**
 4. **Administrative costs and dealer discounts.**
 5. **Statutory conformance or technical compliance issues.**

6

Substantial Compliance

- **A state's sales and use tax laws have to be in substantial compliance with SSUTA for the state to be eligible to participate in the Agreement.**
- **The governing board makes the initial determination of substantial compliance. Upon acceptance into the Agreement, the chief executive of the state's tax agency annually re-certifies substantial compliance.**
- **How many straws does it take to break the camel's back?**

7

Standards for Future Sales Tax Legislation

- **Does the legislation move the state out of substantial compliance with the Agreement?**
- **Who will make this determination and when? Will the determination be made contemporaneously with committee hearings on the bill or after the end of the relevant Session?**
- **Procedures may need to be adopted by states participating in the Agreement.**
- **Amendments to SSUTA require a three-fourths vote of the entire governing board.**

8

Annual Recertification of Compliance

- **The chief executive of the state's tax agency annually recertifies substantial compliance.**
- **The chief executive shall include in the recertification any changes in its statutes, rules, regulations, or other authorities that could affect compliance.**
- **The governing board, however, is the final arbiter of substantial compliance.**

9

Administrative Costs and Dealer Discounts

- **Administrative costs upon states participating in SSUTA include:**
 1. **Ongoing maintenance of databases of sales and use tax rates and zip codes.**
 2. **Monetary allowances to Certified Services Providers (CSPs).**
 3. **Additional discounts to sellers voluntarily participating in the Agreement.**
 4. **Amnesty to vendors voluntarily registering.**
 5. **Potential expenses of the governing board and staff.**

10

Administrative Costs and Dealer Discounts

- **Administrative costs upon vendors voluntarily participating in SSUTA include:**
 1. **Participating vendors may be required to submit sales and use tax returns and remittances electronically.**
 2. **Potential of systems costs.**

11

Statutory Conformance or Technical Compliance Issues

- **If Virginia were to conform with SSUTA, the Commonwealth's laws would have to be amended to address:**
 1. **SSUTA's sourcing rules conflict with current intrastate sourcing rules.**
 2. **Taxability of freight and handling charges.**
 3. **Sales tax rates on modular buildings and maintenance contracts.**
 4. **Definition of food for sales tax and local meals tax purposes.**

12

Streamlined Sales and Use Tax Agreement: What Does It Mean for Virginia's Technology Future?

Virginia Remote Sales Tax
Collection Study Commission
August 16, 2004

Josh Levi
VP for Policy
Northern Virginia Technology Council



Technology is the Economic Engine of Virginia

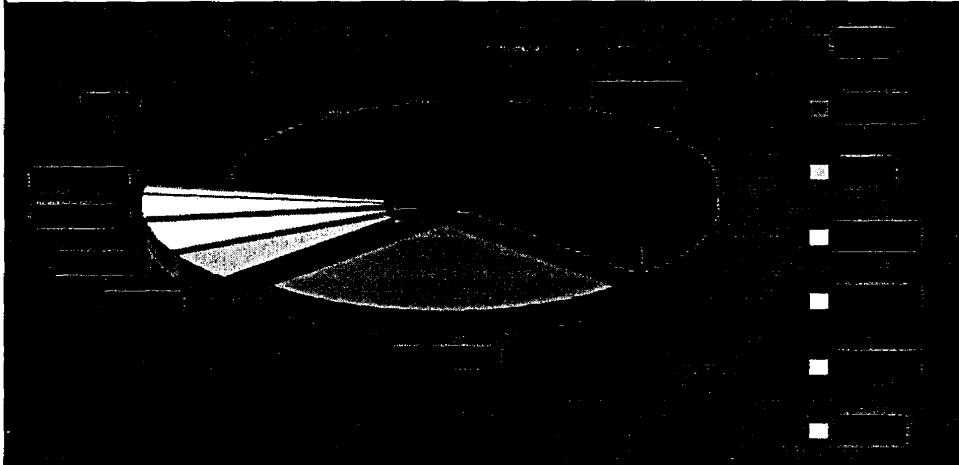
Virginia's Diverse Technology Industry Spans All
Sectors Including:

- Software
- Information Technology
- Internet
- ISPs
- ASPs
- Telecommunications
- Biotechnology
- Bioinformatics
- Aerospace
- Nanotechnology
- Service Providers



Technology is the Economic Engine of Virginia

Size of NVTTC Member Companies
By Number of Employees



Technology is the Economic Engine of Virginia By The Numbers

- Technology employment: 424,702 (3Q, 2003)
- 2nd highest employment rate in the nation (March 2003-March 2004)
- More than 20% of Virginia's payroll is in high tech sector
- Wages and Salaries: \$7,010,385, 000 (3Q, 2003)
 - VA Average tech wage : \$66,026 (3Q, 2003)
 - VA Average wage: \$37, 713 (3Q, 2003)
- Northern Virginia:
 - Over 60% of Virginia's tech businesses and workers
 - 4400 IT companies in Fairfax County alone
 - Creates 2 of every 3 jobs in VA
 - Lowest unemployment in VA at 2.2%
 - NoVa's tech driven wages/salaries ready to grow 9% this year, 9% in 2005

Sources:

- Virginia Economic Trends, 2nd Quarter 2004 Report
- Fairfax County EDA

Technology is the Economic Engine of Virginia

Virginia Ranks At The Top Nationally

- #1 - Technology Concentration (degree to which state economy is fueled by tech sector)
- #1 - New technology companies formed (as % of all new companies established)
- #1 - Number of computer specialists per 10,000 workers
- #1 - Computer and Information Systems Experts
- #2 - Technology company payroll (as % of total)
- #2 - Net new technology company formations
- #2 - Computer systems design and related services employment
- #4 - Technology and Science Workforce (as % of total state employment)
- #5 - Internet services employment

Sources:

- State Science and Technology Indicators: Fourth Edition, US Dept. of Commerce, 2004
- Milken Institute, 2004 State Technology and Science Index
- AEA: Cyberstates 2003

Technology is the Economic Engine of Virginia

Virginia's Technology Assets Drive Success

- Highly Educated/ Highly Skilled Workforce
- 12 Major Federal Research Labs, Agencies, Centers
- 7 Public Research Universities (2 Rank Top Ten for Education)
- Nationally Recognized Community College System
- 10 Regional Technology Councils
- Strong Technology Policy Framework:
 - Internet governance and e-government
 - Promotion of entrepreneurship
 - Important tax policy initiatives
 - Strong economic development policies

Technology is the Economic Engine of Virginia

Good Public Policy Decisions Drive Success

- Virginia Policy Efforts Have Focused On:
 - ♦ Attracting technology businesses, jobs to VA
 - IT among 9 sectors targeted by VEDP
 - ♦ Making Internet, technology easier, more accessible for business and consumers
 - ♦ Encouraging traditional business to utilize technology/online transactions, to gain benefits of larger economy:
 - Increased speed
 - Accuracy
 - Automated processes
 - Convenience
 - Better Bottom line

Technology is the Economic Engine of Virginia

Good Public Policy Decisions Drive Success

- Low Corporate Tax Structure
- First Cabinet-level Secretary of Technology
- Important Technology Policy Initiatives (Digital Signatures, UCITA, UETA)
- State-level Moratorium on Internet access taxes
- Targeted Tax Incentives (Biotechnology, ISPs, Venture Capital/Angel Investors, Software)
- Aggressive Anti-Spam and Computer Crimes Laws (Long Arm Statute, Encryption)
- Declaratory Judgment for Sales Tax Obligations
- Virginia's Center for Innovative Technology (CIT)
- Joint Commission on Technology and Science (JCOTS)

SSUTA: A Significant Change In Course

5 Main Tech Industry Concerns

1. Work In Progress, Little To Evaluate
2. Expanding Tax Collection Responsibilities To 30 Plus States Would Exact Inordinate Compliance Burden On Virginia Technology Businesses And On E-commerce
3. Scope Of SSUTA Would Extend Beyond E-retailers
4. Costs And Benefits To Virginia Are Still Unknown
5. Virginia's Comparative Advantage In Growing And Attracting Technology Companies Would Erode, Nationally And Internationally



Main Concerns:

SSUTA Is A Work In Progress

- There Is No National Consensus
- Terms Still Being Written, Changed
"SSTP Agreement is still undergoing changes and it is impossible to predict the provisions of the final Document"
- Kenneth W. Thorson , Virginia's Tax Commissioner-July 15, 2003
- There Is No National Consensus
- 20 states → Congressional Involvement →
Congressional Mandates?
 1. Small Business Exemption (Under \$5 million)?
 2. Shifting Governance Body/Role of Federal Courts
 3. Seller Compensation? (i.e. Administration, collection and remittance PLUS "all tax processing costs"?)



There Is No Consensus: Example - Sourcing

- Section 102: Fundamental Purpose
 - ♦ The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:
 - ♦ F. Uniform sourcing rules for all taxable transactions. (SSUTA, November 12, 2002)

There is No Consensus: Example - Sourcing

- ♦ “Sourcing is a material part of the SSTA. Nonconformity with SSTA sourcing will prevent Washington from becoming a member state of the SSTA and its governing board. As a result, Washington will not enjoy the benefits of the SSTA”

- Washington State Streamlined Sales and Use Tax Agreement Sourcing Study, December 2003.

- ♦ “The following criteria are the minimum simplification requirements for the Agreement:

- (3) Uniform rules for sourcing and attributing transactions to particular taxing jurisdictions”

- S.1736. Oct. 15, 2003.

There is No Consensus: Example- Sourcing

- “Adopt the Streamlined Sales Tax statute (without the sourcing rules), effective July 1, 2006.”
 - A Commonwealth of Opportunity Plan, Governor Mark Warner
- **“The one area where Virginia is not conforming to the agreement is related to the sourcing for purposes of the local sales tax.** This is being done to preserve the status quo for Virginia dealers and limit the shifting of local sales tax revenue. Under the terms of the agreement, all sales, both interstate and intrastate, would be sourced to the locality where the goods are destined. This would require Virginia to source the 1 penny local sales tax to the locality of use or delivery, instead of the locality of the sale. Making this conforming change would impose significant burdens on in-state dealers and shift revenue between localities. **Several states that have changed their local sourcing rules have encountered significant problems and resistance from in-state dealers in trying to implement a change in local sourcing. Ohio and Kansas, which adopted the “destination” sourcing rules, have both delayed implementation of this change due to concerns from local vendors. Texas and Washington have adopted the other requirements of the SSTP agreement, without the sourcing rules. This bill would follow the approach taken by Texas and Washington and adopt the agreement terms without the sourcing change.** Because this bill has an effective date of July 1, 2006, Virginia would have time to determine whether the issue can be renegotiated among the states.”
 - VA Dept of Taxation 2004 Fiscal Impact Statement: SB 514 (Hanger).

Main Concerns:

Expanding Tax Collection Responsibilities To 30 Plus States Would Exact Inordinate Compliance Burden On Virginia Technology Businesses And On E-Commerce



SSUTA: A Significant Change in Course

- Current Environment
 - Virginia technology businesses, like traditional businesses, must collect sales taxes, regardless of the medium by which transaction occurs.
 - Virginia technology businesses, like traditional businesses, responsible for administering one sales tax system, one sales tax rate, one audit, one set of rules.
 - Virginia consumers and businesses required to remit use tax . One use tax system, one audit, one use tax rate, one set of rules.



SSUTA: A Significant Change In Course

- Proposed Environment
 - Virginia technology businesses, like traditional businesses, still must collect sales tax, regardless of the medium by which that transaction occurs.
 - Use tax collection responsibility shifts from purchaser to out-of-state seller.
 - Virginia technology businesses, unlike traditional businesses, must collect and remit sales and use taxes for every state in which they have a customer. Multiple sales tax systems, multiple sales tax rates, potential for multiple audits, multiple rules.



What is the Cost SSUTA Imposes On Business?

- 20+ States As Signatories, No Due Diligence Study
- Plug-in, Turnkey Solution Not Always Option
- Expensive To Retool Backend Staff/Systems (Returns, Partial Sales, Exchanges, Credits)
- Companies With No Obligation In VA Would Have To Pay For Back End Systems And Infrastructure To Collect In Other States (Internet Services Companies, Software Companies)

What is the Opportunity Cost SSUTA Imposes On Business?

- Disproportionate burden on small businesses
 - Barrier to entry, disincentive to increase market share
 - Counters benefits of e-commerce: speed, convenience, accuracy, productivity and expanded markets

Level Playing Field? Different Playing Field! Another Look At Sourcing

- ♦ Big Burden:
 - In-state dealers: main street businesses resist SSUTA Uniform Sourcing Rules requiring them to track and account for good shipped to various jurisdictions within Virginia.
- ♦ Bigger Burden:
 - SSUTA would require technology businesses to account for good shipped to jurisdictions nationwide (potentially 40-7000 jurisdictions).
- ♦ "The one area where Virginia is not conforming to the agreement is related to the sourcing for purposes of the local sales tax. This is being done to preserve the status quo for Virginia dealers and limit the shifting of local sales tax revenue. Under the terms of the agreement, all sales, both interstate and intrastate, would be sourced to the locality where the goods are destined. This would require Virginia to source the 1 penny local sales tax to the locality of use or delivery, instead of the locality of the sale. Making this conforming change would impose significant burdens on in-state dealers and shift revenue between localities. Several states that have changed their local sourcing rules have encountered significant problems and resistance from in-state dealers in trying to implement a change in local sourcing. Ohio and Kansas, which adopted the "destination" sourcing rules, have both delayed implementation of this change due to concerns from local vendors. Texas and Washington have adopted the other requirements of the SSTP agreement, without the sourcing rules. This bill would follow the approach taken by Texas and Washington and adopt the agreement terms without the sourcing change. Because this bill has an effective date of July 1, 2006, Virginia would have time to determine whether the issue can be renegotiated among the states."
 - VA Dept of Taxation 2004 Fiscal Impact Statement, SB 514 (Hanger).

Main Concerns: The Scope of SSUTA Would Extend Beyond E-Retailers / ".coms"

- Will Virginia companies be forced to collect and remit sales tax on services?
- Sales Tax On Professional Services: CT, HI, SD, TX...
In some instances "data processing" and "information services".
- South Dakota taxes Internet access service, domain fees, design or placement of ads on the Internet, web hosting services, engineering services.
 - Internet Registrars : Internet domain fees?
 - Technology Service Providers: Data Processing, online content, search engines?
 - ISPs: Internet Services, Internet Access Taxes?
 - ASPs, Data Centers: Web Hosting Services?
 - Computer and Software Engineering Firms: engineering services?



Main Concerns:

The Scope of SSUTA Would Extend Beyond E-Retailers / ".coms"

- Will Virginia companies have to collect and remit sales tax on electronically delivered software or computer information?
- VA Law- Expressly exempts the electronic delivery of software, data, content and other information services via the Internet from the Commonwealth's sales and use tax.
 - Chapter 607, 2004 VA Acts of Assembly; State Tax Commissioner Rulings (97-405 and 02-111)
- Kentucky Law- Beginning July 1, 2004, prewritten software and other tangible personal property such as books and movies that are downloaded electronically to Kentucky customers will be taxable on the same basis as comparable products delivered by mail or purchased over the counter.
 - Kentucky KRS 139.60

Main Concerns:

Costs and Benefits To Virginia Are Still Unknown

Question: How much would Virginia really gain in sales tax revenues?

Answer: Unknown

- We know that:
 - Virginia law requires those who make purchases from out-of-state sellers to remit a use tax to the Commonwealth on all purchases over \$100.
 - 90% of remote sales in Virginia are B2B and the payment of use tax pursuant to those transactions is enforced through state tax audits and voluntary reporting (\$251 million was collected in 1999).
 - Forrester reports that B2B will be increasing to 95% by 2011
 - 10% of remote sales in Virginia are B2C, decreasing to 5% by 2011
 - Consumer use tax compliance is low



Main Concerns: Costs and Benefits To Virginia Are Still Unknown

Question: How much would Virginia really gain in sales tax revenues?

Answer: Unknown

- Forrester also tells us:
 - "Online sales now closely mirror offline sales: With the exception of Amazon.com and eBay, the majority of online sales are closed by the same retailers that dominate offline sales."
 - "Who are these multichannel retailers? They are the same retailers that succeed offline-Target, Wal-Mart and Sears, for example."
 - "Sales from multichannel retailers accounted for 72% of online sales in 2002 and 75% in 2003."
 - "Of those that sell online, 94% of the top 100 retailers collect sales tax online in states in which they have a nexus."

Source: The Growth of Multichannel Retailing, Forrester Research Inc, 2004



Main Concerns: Costs and Benefits To Virginia Are Still Unknown

Question: How much would Virginia really gain in sales tax revenues?

Answer: Unknown

- National numbers/estimates are all over the place:
 - 2003 US B2C E-commerce Data
 - (Old) University of Tennessee \$127.4 billion
 - (New) University of Tennessee \$92 billion
 - Forrester Research \$114 billion
 - Jupiter Research \$52 billion
 - US Department of Commerce \$55 billion



Main Concerns: Costs and Benefits To Virginia Are Still Unknown

Question: How much would Virginia really gain in sales tax revenues?

Answer: Unknown

- Virginia numbers/estimates are all over the place:
 - The University of Tennessee *Mea Culpa*
 - Overstated 2003 Lost Revenue Projections By 44%
 - Revised Downward From \$458 million to \$256 million.
 - "The experience of the last several years indicates that e-commerce has been a less robust channel for transacting goods and services than was anticipated when we prepared the earlier estimates. The findings provided here are based on lower estimates of e-commerce, and the result is a smaller revenue loss than we previously indicated. Our loss estimates are also lower because many more vendors have begun to collect sales and use taxes on their remote sales."
 - State and Local Sales Tax Revenue Losses from E-Commerce: Estimates as of July 2004, University of Tennessee, July 2004



The Virginia Equation: Factors To Consider

- Net-out B2B Compliance In VA Greater Than 73%
- Net-out 6% Of Retailers In Violation Of Current Law
- Net-out Small Business Exemption/\$5 Million Threshold?
- Net-out Seller Compensation, if Any?
- Net-out Va Tax Exemptions (Downloaded Software, Services)
- Net-out \$100 Aggregate Virginia Use Tax Threshold (Assuming No Tax Increase On Consumers)

What is the impact of the Agreement on the competitiveness of Virginia and Virginia businesses in the global economy?

- **Will states lose flexibility in shaping tax policy to grow and attract important industries?**
- **Is Virginia “disarming” its competitive advantage vis a vis non-technology states?**
- **Does Virginia’s tax exemption for downloaded software provide a benefit when Virginia companies must still collect for Kentucky? Internet Services companies? Data processing services companies?**



What is the impact of the Agreement on the competitiveness of Virginia and Virginia businesses in the global economy?

- **Are the states collectively forcing technology companies to grow and expand elsewhere?**
- **Are costs and burdens competitive with other countries?**
- **Does SSUTA encourage entrepreneurs to locate offshore? Will the next “Amazon” Locate Offshore?**



What is the impact of the Agreement on the competitiveness of Virginia and Virginia businesses in the global economy?

The Competition: Software Technology Parks of India

- IT software Industry is exempted by the Andhra Pradesh Pollution Control Act.
- No sales Tax on computer software.
- IT software industry is exempted from zoning regulations for the purpose of location.
- Government agrees in principle to self- certification / exemption as far as possible for the IT Software industry from the provisions of the following Acts / Regulations: Factories Act; Employment Exchange (Notification of Vacancies Act); Payment of Wages Act ; Minimum Wages Act ; Contract Labour (Regulation and Abolition) Act; Workmen's Compensation Act; Andhra Pradesh Shops and Establishments Act; and Employees State Insurance Act.
- Rebate in the cost of land allotted to an IT industry at Rs. 20,000/- per job created subject to certain conditions.
- For IT infrastructure companies establishing facilities on private /APIIC /Government lands, concessions will be in the form of rebate on registration and transfer of property charges and exemption from stamp duty on a reducing scale for sale/ lease of built-up space to the IT industry.
- Investment subsidy for new IT hardware and software industries at 20%of the fixed capital investment but not exceeding Rs 20,00Lakhs.
- Special incentives for Mega Projects/Pioneering Projects.



Reject SSUTA As A Mandate

- Embrace SSUTA Goals: Simplification, Common Definitions
- Seek To Bolster Virginia Revenues:
 - Enforce Tax Laws:
 - 94% Of The Top 100 Retailers Collect Sales Tax Online In States In Which They Have Nexus: 100% Goal
 - Implement Stronger Enforcement For B2B Use Tax Remittance: 100% Goal
 - Increase Consumer Use Tax Obligation Awareness, Begin Enforcement
 - Establish Nexus Through Aggressive Economic Development
 - Target Large Remote Sellers For Relocation, Expansion In VA



Reject SSUTA As A Mandate

- Rework SSUTA As Permissive, Voluntary
- Allow Interested States To Utilize Interstate Compact
- Establish Virginia As Preferred Location For Tech Companies
- Look To Other States As Models:
 - Delaware / Business Incorporations
 - North Carolina / Banks
 - South Dakota / Credit Card Companies
- Virginia's Congressional Delegation Well Positioned To Protect Interests Of Virginia's Technology Economy
- Natural Allies: States Without Sales Tax (New Hampshire) And States With Strong And Diverse Technology Base (Colorado)



Thank You





National **Retail** Federation
The Voice of Retail Worldwide

Testimony of the National Retail Federation

By Maureen B. Riehl, Esq.

**Vice President, Government and Industry Relations
Counsel**

Before the

Virginia General Assembly

**Joint Subcommittee to Study the Impact of Collecting Remote
Sales Taxes on the Economy of the Commonwealth**

Richmond, VA

August 16, 2004

Good afternoon Delegate Hugo and members of the Subcommittee. My name is Maureen Riehl. I am the Vice President, Government and Industry Relations Counsel for the National Retail Federation (NRF), in Washington, D.C. I am here on behalf of NRF and the Virginia Retail Merchants Association (VRMA) to encourage this study subcommittee to recommend that the Commonwealth of Virginia join with the 21 other states that have passed conforming legislation to bring them into compliance with the Streamlined Sales Tax Act ratified by the states in November 2002, to both simplify sales and use tax collection in the Commonwealth, and to later make Virginia eligible for collection of use tax from remote sales.

The **National Retail Federation** is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.4 million U.S. retail establishments, more than 23 million employees - about one in five American workers - and 2003 sales of \$3.8 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations. www.nrf.com.

History: The Retail Perspective.

According to the decisions in two relevant United States Supreme Court decisions, *Bellas Hess* and *Quill*, the high court ruled that state and local sales tax systems were complicated and placed an undue burden on interstate commerce. Because of this burden, remote, out-of-state sellers have been excused from collection of sales or use tax on sales made to remote buyers except in instances where the seller has nexus with the state of the buyer. The advent of the Internet and growth of e-commerce retail sales established a situation where traditional "Main Street" sellers, with no e-commerce or remote sales activity, were both losing sales to competitors on the Internet, while also suffering a non-negotiable price disadvantage of an average of 6% (the average state sales tax rate) for selling the same goods. Considering that most retailer profit margins are on the scale of 3-4%, a non-negotiable price disadvantage of 6% on top of the cost of the goods being sold is clearly a significant discrimination against main street sellers. "Non-negotiable price" (i.e. the sales tax rate mandated for collection by retail on taxable items at storefront) is a relevant distinction, as the shipping, handling and related delivery costs to a remote seller with no nexus in a state are ALL negotiable fees for completing a transaction with a remote buyer. In the event that there is any doubt of how disruptive and uncompetitive this collection imbalance is, merely ask a Virginia furniture merchant about how much more aggressive North Carolina furniture dealers can be when they are marketing sales-tax free merchandise via the Internet compared to the roadside billboards and newspaper advertisements used in the past.

NRF agrees that main street sellers benefit from enhanced services from state and local government, and thus should be obligated to help support those services through the collection of sales tax. It is also true that services provided for by state and local government such as roads, fire and police are used every day by out-of-state sellers to facilitate the delivery and en-route protection of merchandise to in-state buyers.

Sales tax is a consumption tax. Customers that live in a state with sales and use taxes are individually responsible for payment of that tax to their home state. By mandate, the in-state merchant collects the sales tax for the customer; typically, the out-of-state merchant without nexus to the buyer's state does not and has no legal obligation to collect use tax for that same customer. NRF believes that the appropriate place to collect a consumption tax – owed by customers – is at the point-of-sale. NRF's interest is in ensuring that the burden of collection for retailers be eliminated altogether, or minimized, and that the obligation to collect must apply equitably across all channels of sale. Likewise, for remote sellers that currently have no legal obligation to collect tax for their remote buyers, the remote seller's costs of collection should be paid for by the states.

The Streamlined Sales Tax Agreement (SSTA) ratified by 31 states in November of 2002 was a culmination of over four years of intense review and negotiation among business groups – such as NRF and several of its members – state tax experts, and state and local elected officials focused on simplifying state sales and use tax laws. Each of the simplifications detailed in the 76-page

SSTA benefit retailers in some fashion. In the 21 states that have adopted a majority of the SSTA since June 2004 (Arkansas; Iowa; Indiana; Kansas; Kentucky; Michigan; Minnesota; Nebraska; Nevada; North Carolina; North Dakota; Ohio; Oklahoma; South Dakota; Tennessee; Texas; Utah; Vermont; Washington; West Virginia; and Wyoming) and any other state that may later do so, in-state retailers and voluntary remote sellers will be able to avail themselves of a simpler, less costly system for sales tax collection beginning as soon as 2005. SSTA represents the necessary first step for equal collection responsibility for all sellers.

Voluntary v. Mandatory Sales Tax System.

The SSTA is a voluntary agreement; voluntary to the states (a state must pass legislation or adopt rules to be in compliance with the SSTA), and voluntary to remote sellers without nexus in a state. The benefit to a remote seller that volunteers under the SSTA is that the incentives – both financial and the audit hold-harmless provisions – are attractive and significant for those remote sellers that may have either questionable nexus with a state(s), or in instances where the SSTA provisions compliment the remote seller's business development plan.

A voluntary system is a good start, but it does not take care of the problem of winners and losers in the retail world. On its own, SSTA can only provide a framework for a voluntary system for both participation by remote sellers and collection of remote tax. The inequity for all sellers can only be fixed with a mandatory system, one that does not discriminate based on the way in which

goods are bought or sold, and one that mandates collection by all sellers in states that are in compliance with the SSTA. In order for the voluntary SSTA to transition to a mandatory system in the near future, Congress must act.

Likewise, in accordance with this mandatory plan, Virginia must first pass legislation to come into compliance with SSTA in order for the Commonwealth to be eligible for mandatory collection of Virginia use tax by out of state merchants.

Why Do Retailers Care? Assumptions and Realities.

NRF involvement in the development of SSTA was predicated on the following:

- 1) Sales tax is here to stay. Of the tax revenue sources used in states – property, income and/or sales – a consumption tax such as the sales tax has been found in numerous polls and public opinion surveys to be the least offensive to taxpayers, as taxpayers can “choose” to pay the tax based on how much they consume;
- 2) Pre-SSTA, state and local sales tax systems were complicated and costly for retailers to administer. There is a cost bourn by sellers that collect the tax. Even under SSTA, there will be some residual cost to collect tax for state and local government. All sellers should be compensated for reasonable costs that do and may continue to exist for tax collection;
- 3) Pre-SSTA, retailers have no certainty. 7,600 different taxing jurisdictions have varying rates, varying definitions and varying rules, often forcing retailers to guess about taxability;

4) This is not a new tax, and it does not address or affect access to the Internet. The Internet Tax Freedom Act of 2001 (ITFA), whose primary Republican sponsor in the United States Senate is Virginia's own Honorable George Allen, expired late last year is still under consideration in the Congress. ITFA does not apply to sales tax collection responsibilities. ITFA does not address or fix the inequity problem on the sales and use tax collection side.

With over 30 major administrative and political changes, the SSTA provides a baseline framework for a simpler system of sales and use tax collection.

SSTA is not perfect – but it is a vast improvement over the systems in place today. Work is ongoing in the area of more definitions, more simplifications, bundling of services and goods, more CERTAINTY for retailers. Mechanisms exist within the SSTA for states to form a Governing Board to act as the primary decision-making body for future iterations of the SSTA that will ensure that simplification efforts will continue, and plans for the formation of that Board are underway with an anticipated operational date of Summer-Fall 2005.

Benefits of SSTA to Retailers.

Of the numerous benefits to retail articulated in the SSTA, a few of the most notable are:

1) Centralized administration at the state level of all sales and use taxes;

- 2) Uniform exemption certificates with a shift in the burden to the state for authentication;
- 3) Limitations on audits and a hold-harmless provision for mistakes made by retailers using a state authorized system or software program;
- 4) Common definitions;
- 5) Harmonized local and state tax base;
- 6) Limited rates.

SSTA establishes a road map for retailers to know what is taxable, and at what rate – thus providing retailers with certainty in administration, while preserving the sovereign rights of states on political issues of taxability.

Economic Necessity.

Online sales are skyrocketing. In a May 2004 report conducted by Forrester Research for NRF's division, Shop.org, 150 retailers surveyed reported online sales of \$114 billion in 2003, up 51%, representing 5.4% of all retail sales that year. During 2004, the study forecasts that online sales will reach 6.6% of all retail sales. In the wake of this growth, retailers of all kinds are bolstering their efforts to integrate their channels of distribution – store-based, Web-based, and catalog-based – all interdependent and symbiotic. A success merchant keeps an eye on the customer, and responds to the customer needs and wants, or the merchant fails. A copy of the Shop.org/Forrester report is attached to these comments.

Likewise, state economies are becoming more service based and tax revenues used to provide core services are becoming skewed or inordinately burdensome on in-state businesses and/or citizens that could instead benefit from tax relief IF only their state could collect taxes already owed. Use tax from out-of-state purchases made by Virginia residents goes uncollected, even though the tax is due.

Internet sellers with a strong business model are flourishing, and the customers that purchase from them should benefit from a deal on the underlying cost of the merchandise or service purchased, and not have the excuse of tax avoidance as the differential or reason for buying online. This competitive disadvantage where one channel of delivery collects tax while one does not for sale of the same item is simply bad policy and a failure of government to be fair and equal. The marketplace should determine retail winners and losers, not tax policy.

Summation.

NRF and VRMA support the Streamlined Sales Tax Agreement, and we urge the Commonwealth of Virginia to join with other states in adopting sales tax simplifications. As retail assumes that the sales tax is a significant, viable and the least offensive source of state and local government revenue, the rules for sales and use tax collectors should be the same. The most efficient collector of this consumption tax is the retailer, who with the help of modern technology, will now know with certainty what is taxed, and at what rate, regardless of which

venue is used to shop and ultimately complete the sale. By adopting a law that would bring Virginia into compliance with the Streamlined Sales Tax Act provisions, Virginia will take the necessary first step toward a mandatory sales tax system that is both fair and equitable across all states. Likewise, federal legislation to transition the SSTA into a mandatory system is supported by NRF and VRMA, and needed in order for retail to share equal collection responsibilities, and for retail venues to be subject to the same tax rules.

Mr. Chairman and members of the study subcommittee, I appreciate the invitation to come and address you on the merits the sales tax simplification effort overall, and to specifically endorse action by Virginia to modernize its state sales tax system at the earliest possible time.

Thank you for your kind attention.

Contact Information: **Maureen B. Riehl**
Vice President
Government & Industry Relations Counsel
National Retail Federation
325 7th Street, N.W.
Washington, D.C. 20004
(202) 626-8121 -- direct
(202) 638-6133 -- fax
riehlm@nrf.com

STREAMLINED SALES AND USE TAX AGREEMENT

Kenneth W. Thorson
Tax Commissioner
Virginia Department of Taxation

July 15, 2003

1

Background of SSTP

- Response to industry objections by remote sellers to register and collect sales tax
- If state systems are simplified, more likely that Congress will overturn prohibitions on requiring remote sellers to collect the tax
- Developed as a coordinated effort between NGA, NCSL, FTA and MTC

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Background of SSTP

- Began in response to Advisory Commission on Electronic Commerce
- Ultimate goal is collection of tax by remote mail order, telephone and Internet sellers
- Until Congress acts, even if a state adopts the Agreement, registration and tax collection by remote sellers will remain voluntary
- SSTP is **not** an instant revenue raiser

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How Does the SSTP Work?

- States that adopt the terms of the Agreement will become member states
- Adopting the Agreement typically requires legislation to conform state law to the terms of the Agreement
- The first 10 states that join will form the Governing Board of the program which will make subsequent decisions on definitions, etc
- Agreement does not become effective until at least 10 states representing 20% of the population petition for membership

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How Virginia Got to This Point

- SSTP was created in 2000
- States could either participate or observe – Virginia chose to do neither
- Participating states worked to develop an Agreement and the rules and processes to be used once the program was implemented
- Virginia was not at the table for any of the discussions and decisions

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Overall Impact on Virginia

- SSTP Agreement closely aligns with Virginia sales tax
- Virginia is more closely in-line with mainstream sales and use tax policy
- Current Virginia Sales Tax consistent with SSTP objectives
- State level administration of sales and use tax
 - Uniformity in state and local tax bases
 - Simplification of state and local tax rates

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Substantial Compliance Required

- SSTP Agreement requires Implementing States to adopt uniform definitions and procedures
- Future changes to definitions and procedures to be determined by Governing Board
- Agreement applies to both intrastate and Interstate transactions
- States will separately determine taxability of transactions and items based on uniform definitions

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Specific Impact on Virginia Sales Tax

- Generally, adoption of Agreement will require less change in Virginia than in some other states
- However, adoption of Agreement will still require substantial changes to Virginia sales tax law
- While substantial changes to the Agreement at this point are unlikely, Virginia will urge changes on some important issues
- SSTP Agreement is still undergoing changes and it is impossible to predict the provisions of the final document

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General Sourcing Rules

SSTP Agreement Requirements

- Sale is sourced to the dealer's location if delivery occurs at the seller's place of business
- If delivery does not occur at seller's place of business, sale is sourced using destination-based rules
- If seller lacks sufficient information to apply the destination-based rules, sale is sourced to address from which goods were shipped

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General Sourcing Rules

Virginia Sales Tax Requirements

- Sale is sourced to the dealer's location if delivery occurs at the seller's place of business
- For intrastate sales, sale is sourced to the city or county in which the sale is made without regard to the location of the possible use by the purchaser
- For interstate sales, sale is sourced to the point of delivery

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General Sourcing Rules

Impact on Virginia Sales Tax

- Minimal impact on overall sales tax revenue
- Destination-based rule would shift revenues between localities
- Requiring small "main street" type businesses to allocate local sales tax based on point of delivery may impose a significant administrative burden on these businesses

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General Sourcing Rules

Virginia Options

- Lobby SSTP to revisit the issue and allow states to use a dual approach with an origin-based rule for intrastate sales and destination based rule for interstate sales
- Change Virginia law to conform to SSTP sourcing rules

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Definition of Delivery Charges

SSTP Agreement Definition

- Charges by the seller for preparation and delivery to a location designated by the purchaser including, but not limited to, transportation, shipping, postage, handling, crating and packing
- Can exclude separately stated charges for delivery by direct mail

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Definition of Delivery Charges

Virginia Sales Tax Requirements

- Charges for delivery from the seller to the purchaser, commonly known as "transportation-out," and postage or common carrier charges.
- Transportation and delivery charges do not include charges from a manufacturer to a retailer's place of business relative to purchases for resale, nor do they include handling charges

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Definition of Delivery Charges

Virginia Options

- SSTP Agreement definition is broader
- Continuing Virginia exemption for delivery charges using SSTP definition would result in revenue decrease
- Repealing Virginia exemption would result in revenue increase

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OTC Drugs and Grooming and Hygiene Products

- SSTP Agreement definition of OTC drugs is nearly identical to Virginia definition of nonprescription drug
- Separate definition of Grooming and Hygiene Products allows Virginia to either tax or exempt these items
- Virginia currently exempts very few grooming and hygiene products
- Separate definition would allow Virginia to exempt OTC drugs and tax grooming and hygiene products

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Food and Food Products & Prepared Foods

SSTP Agreement provides multiple definitions of food

1. Alcoholic beverages
2. Candy
3. Dietary supplement
4. Food and food ingredients
5. Prepared food
6. Soft drinks
7. Tobacco

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Food and Food Products & Prepared Foods

- Virginia Food Tax Reduction Program ("FTRP") defines "food for human consumption" as the same as "food" is defined in the Food Stamp Act, excluding seeds and plants
- SSTP Agreement makes an exception to the "one rate" rule for food and drugs
- Multiple definitions in Agreement would allow Virginia to craft an exemption that closely matches current FTRP in both content and tax rate

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Other Provisions that May Impact Virginia

Accelerated Sales Tax

- SSTP Agreement limits states from requiring more than one return per month per dealer
- Virginia's Accelerated Sales Tax should not be considered a return, it is an estimated payment

Refunds for Bad Debts

- SSTP Agreement allows refund if bad debt refund exceeds tax liability
- Virginia limits bad debt refund to tax liability and requires carryover of excess

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Other Provisions that May Impact Virginia

Rounding

- SSTP Agreement requires states to have an algorithm that carries tax computation of 3rd decimal point
- Tax must be rounded up whenever 3rd decimal point is greater than 4
- Bracket systems are prohibited
- Virginia will have to abandon use of current bracket system

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Next Steps

Virginia needs to continue to participate in SSTP

- Both Legislative and Executive branches
- SSTP Agreement is a "working document" that is still undergoing change

Monitor Congressional actions

- Until Congress acts to require out-of-state sellers to collect tax, minimal revenue gain from enacting SSTP Agreement
- Now any registration and tax collection is voluntary

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Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth

HOUSE JOINT RESOLUTION NO. 176 (2004)

<http://dls.state.va.us/HJR176.HTM>

October 4, 2004

10:00 a.m.

House Room D, General Assembly Building
Richmond, Virginia

Agenda

1. Call to order and opening remarks.
2. Follow-up issues from last meeting.
 - *Division of Legislative Services, David A. Rosenberg and Mark J. Vucci*
3. Business perspectives on remote sales tax collection.
 - *Direct Marketers Association, Mr. George Isaacson and Mr. Mark Micali*
 - *The Progress & Freedom Foundation, Dr. Thomas M. Lenard*
4. Information on sales and use taxes.
 - *Virginia Department of Taxation*
5. Other business.
6. Adjournment.

MEMBERS

The Honorable R. Lee Ware, Jr.
The Honorable Timothy D. Hugo
The Honorable Lynwood W. Lewis, Jr.
The Honorable Emmett W. Hanger, Jr.
The Honorable Charles J. Colgan
Mr. John Backus
Mr. Steve DelBianco

Mr. Bill Frischling
Mr. Lee Goodman
Mr. Larry K. Pritchett
Mr. John W. Stewart
The Honorable John M. Bennett
The Honorable George C. Newstrom
The Honorable Michael J. Schewel

STAFF

David A. Rosenberg, Senior Attorney, Division of Legislative Services
Mark J. Vucci, Senior Attorney, Division of Legislative Services

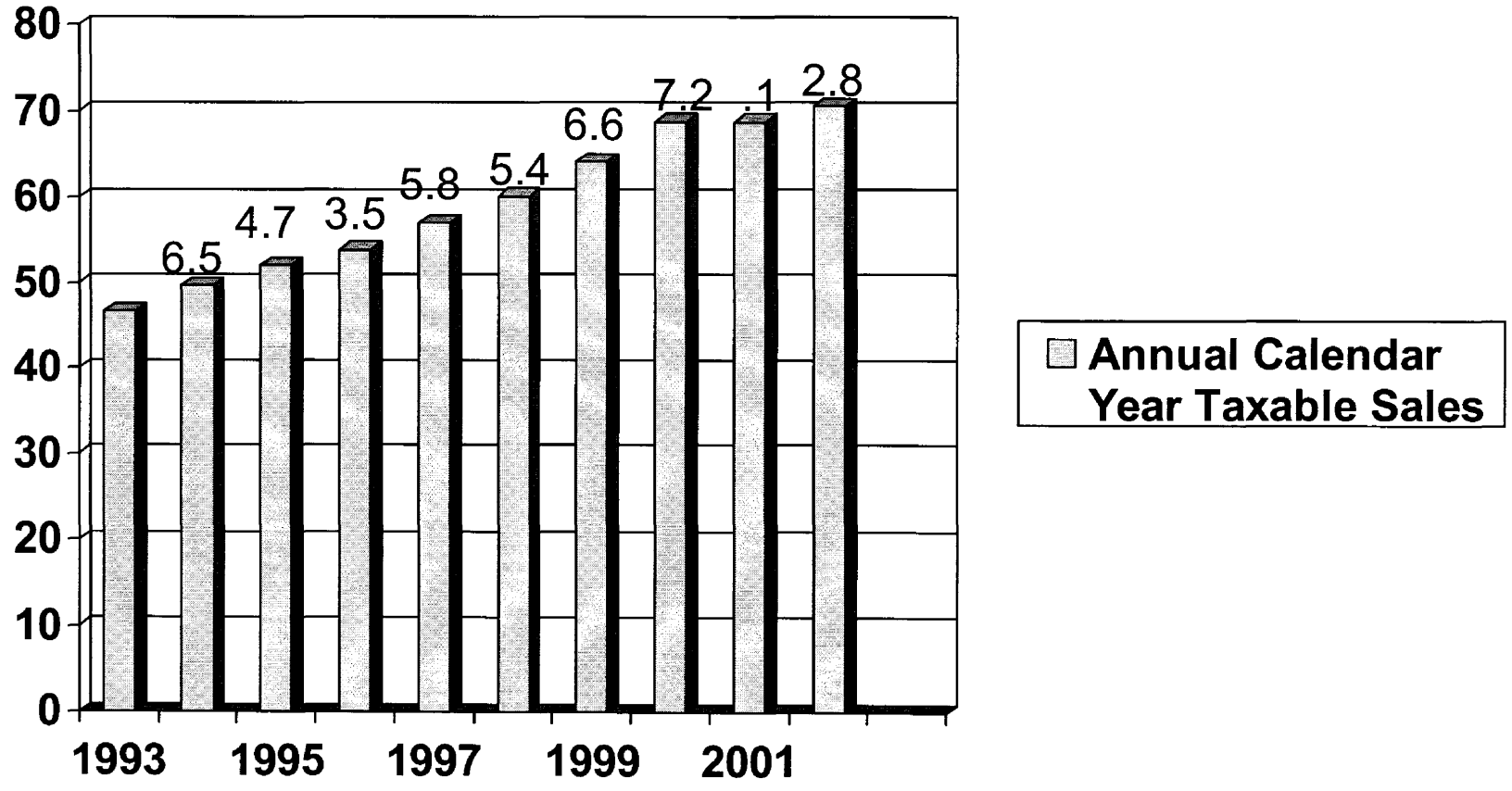
Virginia's Vendor Discount on Retail Sales
Fiscal Years 1995 through 2004

<u>Fiscal Year</u>	<u>Millions</u>
1995	\$38.4
1996	39.7
1997	41.8
1998	43.5
1999	46.2
2000	48.6
2001	50.2
2002	50.5
2003	51.6
2004	56.9

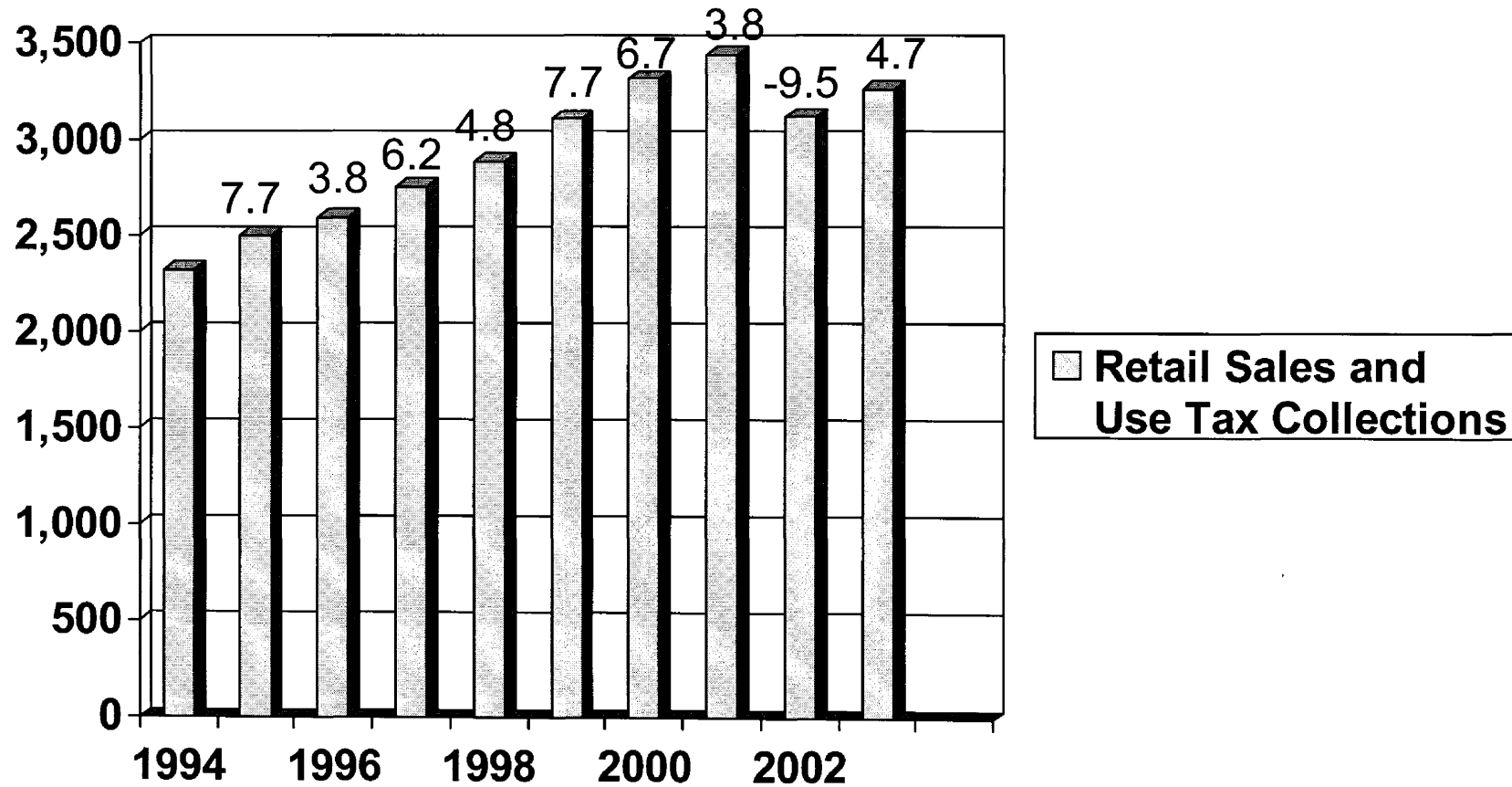
**** Virginia's dealer discount is computed on the first 3% of the sales and use tax imposed. The amount of the first 3% that is paid as a discount is determined using the following table:**

<u>Monthly Taxable Sales</u>	<u>Percentage</u>
\$0 to \$62,500	4%
\$62,501 to \$208,000	3%
\$208,001 and above	2%

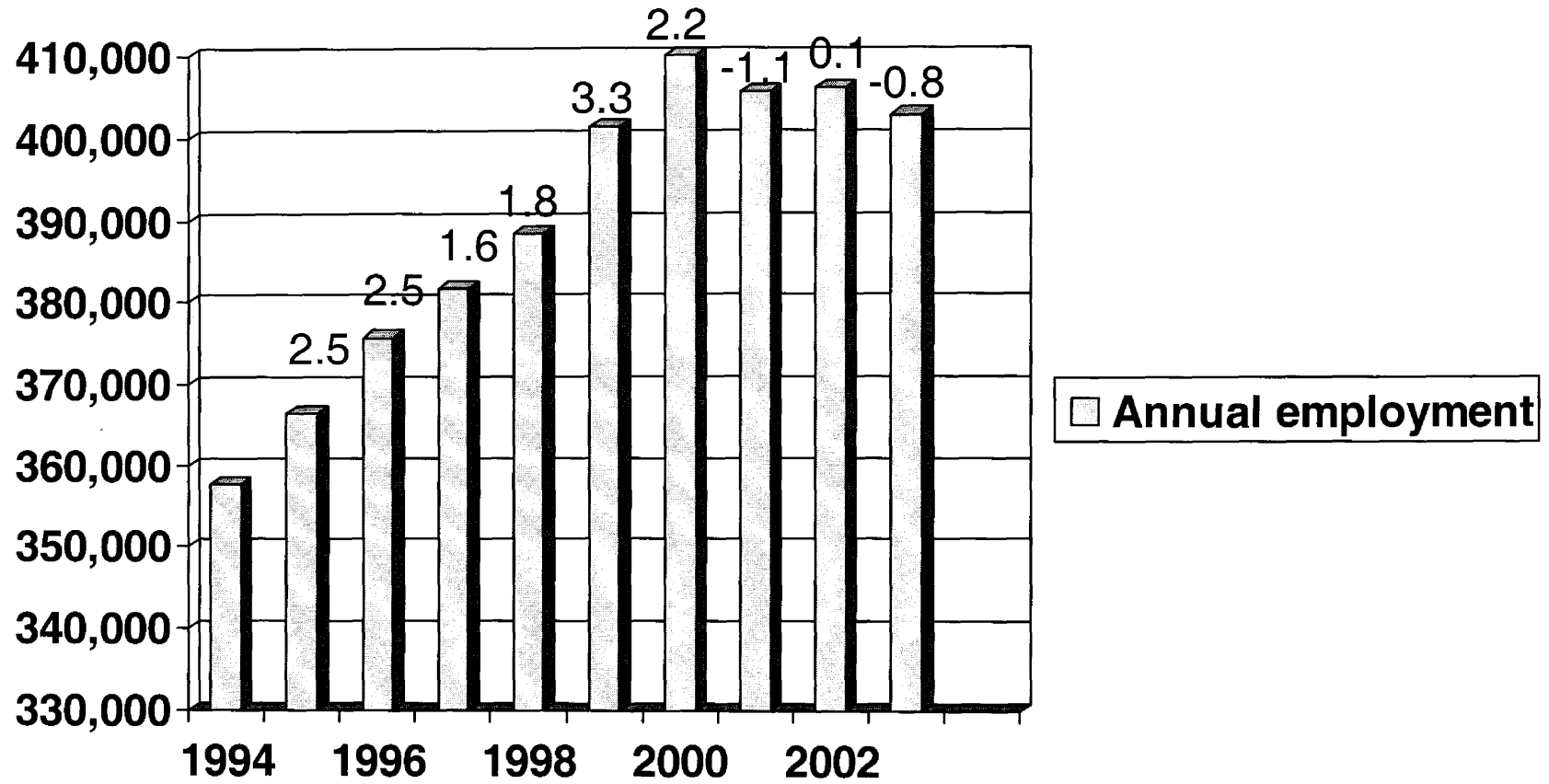
Annual Growth in Total Taxable Retail Sales (in Billions)



Annual Growth in Retail Sales and Use Tax Collections (in Millions)



Annual Growth in Retail Jobs in Virginia



VIRGINIA INDIVIDUAL INCOME TAX SUBTRACTIONS AND DEDUCTIONS

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions and Deductions Claimed		
							2000	2001	2002
Age/Disability/Low-Income									
§ 58.1-322(C)(4)	Social Security Subtraction	The taxpayer may subtract benefits received under Title II of the Social Security Act and Tier I Railroad Retirement benefits subject to federal income taxation pursuant to § 86 of the Internal Revenue Code.	1983	July 1, 1983	1984	To prevent the taxation of social security income taxed at the federal level	\$2,257,626,932	\$2,427,025,541	\$2,537,651,121
§ 58.1-322(C)(4b)	Disability Income Subtraction	Taxpayers may subtract up to \$20,000 of disability income.	1984	January 1, 1984	2000	To prevent the taxation of up to \$20,000 of disability income	\$5,304,136	\$60,368,488	\$96,772,866
§ 58.1-322(C)(19)	Retirement Payments Subtraction	The taxpayer may subtract any income received during the taxable year that is derived from a qualified pension, profit-sharing, or stock bonus plan, an individual retirement account or annuity, a deferred compensation plan or any federal government retirement program. The contributions to these plans must be deductible from the taxpayer's federal adjusted gross income; and the subtraction is only available to the extent the contributions were subject to taxation under the income tax in another state.	1996	January 1, 1996	N/A	To prevent the taxation of retirement income by Virginia when such income is taxed by another state	Data Not Available	Data Not Available	Data Not Available
§ 58.1-322(C)(24)	Federal and State Employees Subtraction	A federal or state employee may subtract the first \$15,000 of his salary if his annual salary is \$15,000 or less.	1999	January 1, 2000	N/A	To prevent taxation of the first \$15,000 of wages for certain low salaried federal and state employees	\$43,336,081	\$62,483,842	\$67,422,396

Virginia Individual Subtractions and Deductions
Page 2

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions and Deductions Claimed		
							2000	2001	2002
§ 58.1-322(C)(25)	Unemployment Compensation Benefits Subtraction	The individual may subtract unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.	1999	January 1, 2000	N/A	To prevent the taxation of Unemployment Compensation Benefits	\$121,019,220	\$270,877,056	\$587,277,586
§ 58.1-322(D)(5)	Age Deduction	Individuals eligible to receive the \$12,000 age deduction prior to taxable year 2004 will continue to receive that deduction. Individuals eligible to receive the \$6,000 age deduction prior to taxable year 2004 will continue to receive that deduction until age 65. At that time, they will receive a \$12,000 age deduction subject to a reduction based on income. Individuals who have not been eligible to receive an age deduction prior to taxable year 2004 will not be eligible to receive an age deduction until age 65. They will then receive a \$12,000 income related age deduction. Individuals who receive a \$12,000 income related age deduction will reduce the age deduction by \$1 for every \$1 of adjusted federal adjusted gross income above \$50,000. Married individuals will reduce the \$12,000 deduction by \$1 for every \$1 of total combined adjusted federal adjusted gross income above \$75,000. Prior to 2004, all taxpayers age 65 and older received a \$12,000 deduction, while taxpayers age 62 to 64 received a \$6,000 deduction.	1993	January 1, 1991	1994, 2001, 2004	To reduce the tax burden on individuals who are age 62 or older	\$6,097,516,497	\$6,592,566,380	\$6,768,211,363

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions and Deductions Claimed		
							2000	2001	2002
Business/Economic Development									
§ 58.1-322(C)(17)	Research And Development Expenses Subtraction	A subtraction is allowed for the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but not deducted, because the taxpayer elected to receive a research tax credit. NOTE: The federal research and development credit expired on June 30, 2004. However, it is likely that Congress will retroactively it.	1994	January 1, 1995	N/A	To compensate for the disallowance of certain expenses on the federal return when a federal credit is claimed	Data Not Available	Data Not Available	Data Not Available
§ 58.1-322(C)(27)	Income Received as a Result of Payments Made Under the Tobacco Settlement Subtraction	Income received as a result of the "Master Settlement Agreement," the National Tobacco Grower Settlement Trust and the Tobacco Loss Assistance Program may be subtracted by tobacco farmers, any person holding a tobacco marketing quota or tobacco farm acreage allotment under the Agricultural Adjustment Act of 1938 or any person having the right to grow tobacco pursuant to such a quota or allotment.	2000	January 1, 1999	N/A	To prevent the taxation of income received from payments as a result of the MSA and other programs	Data Not Available	\$32,488,767*	\$28,635,207*
§ 58.1-322(C)(29)	Gains from Peanut Quota Buyout Program Subtraction	The taxpayer may subtract any gain recognized as a result of the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002. If the payment is received in installment payments, the entire gain recognized may be subtracted. However, if the payment is received in a lump sum, then 20% of the recognized gain may be subtracted and the taxpayer may then deduct an equal amount in each of the 4 succeeding taxable years.	2003	January 1, 2002	N/A	To prevent the taxation of income received from the federal buyout of peanut quotas	Not In Effect	Not In Effect	Data Not Available

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions and Deductions Claimed		
							2000	2001	2002
§ 58.1-322(C)(30)	Avian Influenza Indemnification Payments Subtraction	The taxpayer may subtract the indemnification payments received by contract poultry growers and table egg producers from the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low pathogenic avian influenza in 2002. This subtraction expires on January 1, 2005.	2003	January 1, 2002	N/A	To prevent the taxation of income received from the U.S. Dept. of Agriculture indemnifying farmers from the avian flu outbreak	Not In Effect	Not In Effect	Data Not Available
Education									
§ 58.1-322(C)(20)	Virginia College Savings Plan Subtraction	The taxpayer may subtract any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan. The subtraction for any income attributable to a refund shall be limited to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.	1997	January 1, 1997	1999, 2000	To prevent the taxation of benefits received from a distribution from a prepaid tuition contract with the Virginia College Savings Plan	Data Not Available	\$1,519,121	\$1,626,243
§ 58.1-322(D)(7)	Virginia Education Savings Trust Deduction	Purchasers or contributors may deduct the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan. However, the deduction in any taxable year is limited to \$2,000 per contract or account. No deduction is allowed if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. A purchaser or contributor who has attained age 70 is not subject to the \$2,000 limitation.	1998	January 1, 1996	1999, 2000	To encourage individuals to contribute to a prepaid tuition contract	Data Not Available	\$58,335,801	\$73,778,667
§ 58.1-322(D)(8)	Contributions to Public School Construction Grants Program Deduction	The taxpayer may deduct the total amount he contributed to the Virginia Public School Construction Grants Program and Fund provided the individual has not claimed a deduction for such amount on his federal income tax return.	1998	January 1, 2000	N/A	To encourage contributions to the Public School Construction Grants Program	Data Not Available	\$10,765*	\$4,824*

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions and Deductions Claimed		
							2000	2001	2002
§ 58.1-322(D)(9)	Primary and Secondary School Teacher Deduction	The taxpayer may deduct an amount equal to 20% of the tuition costs incurred by an individual employed as a primary or secondary school teacher to attend continuing teacher education courses that are required as a condition of employment. However, the deduction is only available if the individual is not reimbursed for such tuition costs and the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.	1999	January 1, 1999	N/A	To help alleviate the costs of continuing education incurred by primary and secondary school teachers	Data Not Available	\$354,843	\$178,639
Environment									
§ 58.1-322(C)(22)	Land Conservation Subtraction	The taxpayer may subtract the gain derived from the sale or exchange of real property or an easement to real property that results in the property or easement being devoted to open-space use for not less than 30 years.	1999	January 1, 2000	N/A	To prevent the taxation of gain derived from the sale of property that results in a conservation easement	Data Not Available	\$865,818*	\$1,521,466*
Medical									
§ 58.1-322(D)(6)	Bone Marrow Screening Fee Deduction	A deduction is available for the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor if the individual is not reimbursed for such fee or the individual has not claimed a deduction for the payment of such fee on his federal income tax return.	1997	January 1, 1997	N/A	To encourage individuals to have a bone marrow screening	Data Not Available	\$34,090	\$75,008
§ 58.1-322(D)(10)	Long-Term Health Care Premiums Deduction	An individual may deduct the amount he pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes.	1999	January 1, 2000	N/A	To help alleviate the costs of long term health care premiums	\$4,350,760	\$40,776,405	\$48,470,919

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions and Deductions Claimed		
							2000	2001	2002
Military									
§ 58.1-322(C)(11)	National Guard Salary Subtraction	The wages or salaries received by any person for active and inactive service in the National Guard of Virginia, not to exceed the lesser of the amount of income derived from 39 calendar days of such service or \$3,000, may be subtracted. However, only those persons in the ranks of O3 and below are eligible.	1987	January 1, 1989	N/A	To prevent the taxation of the first \$3,000 of wages from National Guard duty	Data Not Available	\$10,665,944	\$5,422,328
§ 58.1-322(C)(21)	Military Pay Subtraction	An individual may subtract all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving in a combat zone or qualified hazardous duty area treated as a combat zone for federal tax purposes.	1998	January 1, 1998	N/A	To prevent the taxation of military pay earned in a combat zone	Data Not Available	\$10,609,552	\$5,523,356
§ 58.1-322(C)(23)	Basic Military Pay Subtraction	An individual may subtract \$15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days. However, the subtraction amount is reduced dollar-for-dollar by the amount that the taxpayer's military basic pay exceeds \$15,000 and is reduced to zero if the military basic pay is equal to or exceeds \$30,000.	1999	January 1, 2000	N/A	To prevent the taxation of the first \$15,000 of wages for certain low salaried military personnel	\$113,605,981	\$158,630,195	\$160,231,693
§ 58.1-322(C)(26)	Congressional Medal of Honor Recipient Retirement Income Subtraction	The taxpayer may subtract any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.	2000	January 1, 2001	N/A	To prevent the taxation of retirement income of CMH recipients	Not In Effect	\$1,602,649	\$402,696
§ 58.1-322(C)(31)	Military Death Gratuity Payments Subtraction	An individual may subtract the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty.	2003	January 1, 2001	N/A	To prevent the taxation of military death gratuity payments	Not In Effect	Data Not Available	Data Not Available

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions and Deductions Claimed		
							2000	2001	2002
Other									
§ 58.1-322(C)(2)	Income from Obligations of the Commonwealth Subtraction	The taxpayer may subtract income derived from obligations or the sale or exchange of obligations of Virginia or any political subdivision or instrumentality of Virginia.	Pre-1971	January 1, 1972	1997	To prevent the taxation of income from bonds issued by the Commonwealth	Data Not Available	\$8,870,423*	\$5,632,953*
§ 58.1-322(C)(10)	State Lottery Prize Subtraction	The taxpayer may subtract any amount included less than \$600 from a prize awarded by the State Lottery Department.	1987	December 1, 1987	N/A	To promote the lottery by forgoing the taxation of small lottery prizes	Data Not Available	\$1,252,243	\$652,992
§ 58.1-322(C)(12)	Crime Solver Reward Subtraction	Taxpayers may subtract amounts received, not to exceed \$1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency in the apprehension and conviction of perpetrators of crimes. However, this subtraction will not apply to individuals employed by or under contract with a law-enforcement agency, victims or perpetrators of the crime for which the reward was paid or persons who are compensated for the investigation of crimes or accidents.	1988	January 1, 1988	N/A	To forego the taxation of rewards received for providing information to combat crime	Data Not Available	Data Not Available	Data Not Available
§ 58.1-322(C)(28)	Income Received by Holocaust Victims Subtraction	An individual may subtract items of income attributable to assets stolen from, hidden from or lost by an individual who was a victim or target of Nazi persecution or damages, reparations or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death during World War II, its prelude and direct aftermath. This subtraction applies only to an individual who was the first recipient of such income and who was a victim or target of Nazi persecution or a spouse, widow(er), child or stepchild of such victim.	2000	January 1, 1999	N/A	To prevent the taxation of income attributable to asset recovery due to Nazi persecution	Data Not Available	\$48,987	\$9,903

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions and Deductions Claimed		
							2000	2001	2002
§ 58.1-322(D)(3)	Child and Dependent Care Expenses Deduction	The taxpayer may claim a deduction equal to the amount of expenses upon which the Child and Dependent Care Credit is based under § 21 of the Internal Revenue Code. That credit is available for taxpayers who have dependents and who must pay for household services or dependent care services in order to work or look for work.	1979	January 1, 1979	N/A	To reduce the tax burden on individuals who must incur the cost of dependent care services in order to seek employment	\$379,607,420	\$382,698,749	\$397,587,745
§ 58.1-322(D)(4)	Foster Child Deduction	A \$1,000 deduction is available for each child residing for the entire taxable year in a home under permanent foster care placement if the taxpayer can also claim the child as a personal exemption under the Internal Revenue Code.	1986	January 1, 1986	N/A	To reduce the tax burden on individuals who provide foster care	Data Not Available	\$849,000	\$210,000

* Data includes information regarding subtractions or deductions taken by corporations.

NOTE: The estimates contained in these tables show the actual amounts claimed on income tax returns. These amounts do not represent the actual fiscal impact associated with each preference. In order to determine final estimates for any of the items listed, additional analysis would be required.

VIRGINIA INCOME TAX CREDITS

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Amount of Credits Used		
							2000	2001	2002
Age/Disability/Low-Income									
§ 58.1-339.7	Home Accessibility Features for the Disabled Tax Credit	A credit is provided for an individual who installs or hires someone to install one or more accessibility features in his residence to make it accessible to disabled individuals.	1999	January 1, 2000	N/A	To offset installation costs for accessibility features for the disabled in one's home	\$7,724	\$10,392	\$7,385
§ 58.1-339.8	Low-Income Taxpayer Tax Credit	This credit was expanded in 2004 to allow individuals to claim a credit equal to the greater of 20% of the federal earned income credit or the current Virginia low-income credit. The Virginia low-income credit provides a nonrefundable individual income tax credit equal to \$300 for each personal and dependent exemption for taxpayers with family Virginia adjusted gross income at or below the federal poverty line.	2000	January 1, 2000	2004	To provide tax relief to low-income taxpayers	\$14,990,923	\$17,146,625	\$19,477,062
§ 58.1-339.9	Rent Reduction Tax Credit	This credit is allowed to individual or corporate owners of rental property who provide a rent reduction to low-income tenants who are over age 62, have a mental or physical disability or have been homeless at any time within the 12 months preceding the lease term. The reduced rent must be at least 15% below the market rate. No credit is allowed unless a rental reduction credit was validly claimed under § 58.1-339 for all or part of December 1999. This credit is available for taxable years through December 31, 2005.	2000	January 1, 2000	N/A	To subsidize reduced rent for the elderly, disabled, and homeless	\$40,423	\$40,438	\$33,894
§ 58.1-435	Low-Income Housing Credit	This credit is allowed to taxpayers who have invested in low-income housing projects in Virginia. In order to qualify, the project must be eligible for the federal low-income housing credit.	1989	January 1, 1990	1990, 1992, 1994, 1996, 2001	To encourage investment in low-income housing units	\$29,044	\$74,348	\$33,109

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Amount of Credits Used		
							2000	2001	2002
§ 58.1-439.9	Employers of Temporary Assistance to Needy Families (TANF) Recipients Tax Credit	This credit grants businesses that employ 100 or fewer employees a tax credit for hiring Virginia residents receiving Temporary Assistance to Needy Families (TANF) benefits.	1998	January 1, 1999	2002	To encourage businesses to employ low-income individuals	\$1,616	\$1,589	\$882
Agriculture									
§§ 58.1-334 & 58.1-432	Conservation Tillage Equipment Tax Credit	This credit is available to individuals and corporations for the purchase and installation of conservation tillage equipment used in agricultural production. Conservation tillage equipment is a planter or drill designed to minimize soil disturbance when crops are planted.	1985	January 1, 1985	1990	To encourage the use of equipment that minimizes soil disturbance for planting and other purposes	\$250,129	\$200,475	\$189,682
§§ 58.1-337 & 58.1-436	Advanced Technology Pesticide and Fertilizer Application Equipment Tax Credit	This credit is available to individual or corporate purchasers of equipment that is certified as providing more precise pesticide and fertilizer application.	1990	January 1, 1990	1996	To encourage the purchase and use of pesticide and fertilizer application equipment that reduces the potential for adverse environmental impacts	\$153,724	\$163,984	\$95,104
Business/Economic Development									
§ 58.1-339.4	Qualified Equity and Subordinated Debt Investment Tax Credit	This credit is provided for taxpayers making investments in the form of qualified equity and subordinated debt in a qualified small business venture.	1998	January 1, 1999	2004	To encourage investment in start-up businesses	\$1,030,625	\$1,908,503	\$1,723,461
§ 58.1-439	Major Business Facility Job Tax Credit	This credit is provided to qualifying companies for the creation of new, permanent full-time positions in Virginia. This credit will expire on January 1, 2010.	1994	January 1, 1995	1995, 1996, 1997, 1998, 2004	To encourage the development and expansion of businesses within Virginia	\$6,203,500	\$8,004,072	\$8,900,856
§ 58.1-439.4	Day-Care Facility Investment Tax Credit	This credit is available to employers who establish a licensed day-care center in Virginia for the children of the taxpayer's employees. No taxpayer has ever validly claimed this credit.	1996	January 1, 1997	N/A	To encourage the establishment of day-care facilities with the workplace	\$0	\$0	\$0

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Amount of Credits Used		
							2000	2001	2002
§ 58.1-439.6	Worker Retraining Tax Credit	This credit is offered to employers for all expenditures paid for eligible worker retraining for qualified full-time employees.	1997	January 1, 1999	N/A	To encourage employers to retrain employees	*	\$9,457	\$3,085
§ 58.1-439.12:01	Cigarettes Manufactured and Exported Tax Credit	This credit is available to corporations that export cigarettes manufactured in Virginia. The amount of the credit depends on the amount by which the taxpayer's exports in the taxable year exceed its exports in the 2004 taxable year. This credit is effective for taxable years beginning prior to January 1, 2016.	2004	January 1, 2006	N/A	To encourage cigarette manufacturers to retain their shipping volume in Virginia	Not In Effect	Not In Effect	Not In Effect
§ 58.1-439.13	Investment in Technology Industries in Tobacco-Dependent Localities Tax Credit	This credit is available to taxpayers who make a qualified investment in an information technology or biotechnology company located in a tobacco dependent locality. This credit is funded by the Tobacco Indemnification and Community Revitalization Fund and is available for taxable years beginning before January 1, 2010.	2000	January 1, 2000	N/A	To attract technology industries to tobacco-dependent localities	Credit not Funded by the Tobacco Indemnification and Community Revitalization Fund		
§ 58.1-439.14	Research and Development Activity Occurring in Tobacco-Dependent Localities Tax Credit	This credit is allowed for qualified research expenses in the area of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, medical device technology or other technology field occurring at the taxpayer's place of business in a tobacco-dependent locality. This credit is funded by the Tobacco Indemnification and Community Revitalization Fund and is available for taxable years beginning before January 1, 2010.	2000	January 1, 2000	N/A	To attract industries engaging in research and development to tobacco-dependent localities	Credit not Funded by the Tobacco Indemnification and Community Revitalization Fund		
§ 59.1-280	Enterprise Zone Business Tax Credit	A qualified business firm can claim this credit, which is equal to a percentage of its annual tax liability for a period of 10 years. This credit expires on July 1, 2005.	1982	July 1, 1982	1983, 1988, 1992, 1995, 1996, 1997, 1998, 2003	To stimulate the growth of businesses in certain areas of Virginia.	\$1,597,643	\$1,613,787	\$2,301,945

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Amount of Credits Used		
							2000	2001	2002
§ 59.1-280.1	Enterprise Zone Real Property Investment Tax Credit	This credit is available to owners or tenants of real property located in an enterprise zone who rehabilitate or expand the property in order to assist the conduct of a trade or business by the owner or tenant within the enterprise zone. This credit expires on July 1, 2005.	1995	July 1, 1995	1997, 1998	To encourage the rehabilitation of property through the establishment of a business in certain areas of Virginia	\$1,170,382	\$1,743,191	\$2,275,083
Charity									
§§ 63.2-2000 - 63.2-2006	Neighborhood Assistance Tax Credit	This credit is for business firms and individuals who contribute to approved neighborhood assistance organizations.	1981	July 1, 1982	1982, 1984, 1986, 1989, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004	To encourage business firms and individuals to make donations to neighborhood organizations.	\$3,729,505	\$4,574,478	\$4,385,937
Coal									
§ 58.1-433.1	Coal Employment and Production Incentive Tax Credit	This credit is available to those taxpayers who produce electricity for self-consumption or for sale and who purchase and consume coal mined in Virginia.	1999	January 1, 2001	2000	To maintain the current employment levels in Virginia's coal industry	Not In Effect	\$0	\$0
§ 58.1-439.2	Coalfield Employment Enhancement Tax Credit	This credit is provided to any taxpayer who has an economic interest in coal mined in Virginia or who produces coalbed methane in Virginia. This credit is effective for taxable years prior to January 1, 2008.	1995	January 1, 1996	1996, 1999, 2000	To maintain the current employment levels in Virginia's coal industry	\$10,060,388	\$18,167,719	\$18,918,266
Environment/Conservation									
§ 58.1-339.2	Historic Rehabilitation Tax Credit	This credit is based upon the eligible expenses incurred in rehabilitating a "certified historic structure" in Virginia.	1996	January 1, 1997	1998, 1999, 2000	To encourage the restoration of certified historic structures	\$14,723,947	\$17,658,489	\$23,196,899

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Amount of Credits Used		
							2000	2001	2002
§ 58.1-339.3	Agricultural Best Management Practices Tax Credit	A tax credit is provided for persons engaged in agricultural production based on the costs associated with implementing "agricultural best management practices," which provide improved water quality in Virginia's streams, rivers and the Chesapeake Bay.	1996	January 1, 1998	N/A	To reduce pollution and promote water conservation through management practices approved by Virginia Soil and Water Conservation Board	\$525,317	\$479,014	\$528,324
§§ 58.1-339.10 & 58.1-439.12	Riparian Forest Buffer Protection for Waterways Tax Credit	This credit is available for any individual or corporate taxpayer who owns land abutting a waterway on which timber is harvested and who does not harvest the timber on certain portions of the land near the waterway.	2000	January 1, 2000	N/A	To encourage taxpayers to forego the harvesting of timber on land that is adjacent to a waterway	\$20,740	\$59,595	\$47,387
§ 58.1-438.1	Vehicle Emissions Testing Equipment Tax Credit	This credit is available for the purchase or lease of enhanced vehicle emissions testing equipment in localities that have a mandatory enhanced vehicle emissions program or in localities that are adjacent to such a locality.	1997	The credit is available for any equipment purchased or leased after December 31, 1996	1998	To reduce the cost of vehicle emissions testing equipment in localities that require emissions tests	\$77,944	\$86,548	\$75,444
§ 58.1-438.1	Clean Fuel Vehicle and Certain Refueling Property Tax Credit	This credit is allowed for purchases of electric vehicles, vehicles that operate on alternative fuels and refueling property related to the operation of these vehicles.	1993	January 1, 1993	1994, 1995	To reduce pollution by encouraging the purchase of clean fuel vehicles and equipment	\$11,505	\$32,020	\$80,849
§ 58.1-439.1	Clean Fuel Vehicle Job Creation Tax Credit	This credit is allowed for each job created in Virginia to manufacture clean fuel vehicles or convert conventionally fueled vehicles to run on clean fuel. Jobs created to manufacture clean fuel vehicle components are also eligible for the credit. This credit is effective for taxable years through December 31, 2006.	1995	January 1, 1996	N/A	To attract businesses that manufacture clean fuel vehicles	\$0	\$0	\$0

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Amount of Credits Used		
							2000	2001	2002
§ 58.1-439.7	Recyclable Materials Processing Equipment Tax Credit	This tax credit is allowed to corporations for the purchase of machinery and equipment used in facilities in Virginia that manufacture, process, compound or produce items of tangible personal property from recyclable materials for sale. This credit will expire on January 1, 2007.	1998	January 1, 1998	2001, 2004	To attract businesses engaged in the use of recycling equipment	\$200,035	\$58,862	\$54,473
§ 58.1-439.10	Purchase of Waste Motor Oil Burning Equipment Tax Credit	This credit is for Virginia taxpayers who operate a business facility within Virginia, accept waste motor oil from the public and purchase equipment used exclusively for burning waste motor oil at the business facility.	1998	January 1, 1999	N/A	To encourage businesses to accept waste motor oil	\$124,560	\$140,792	\$125,645
§ 58.1-512	Land Preservation Tax Credit	This credit is for individuals or corporations donating land for conservation and preservation purposes. A taxpayer who has earned this credit may transfer it for use by another taxpayer on Virginia income tax returns.	1999	January 1, 2000	2002	To supplement land conservation programs and to encourage the preservation of Virginia's natural resources.	\$2,216,991	\$3,501,694	\$4,985,817
Other									
§ 58.1-332.1	Taxes Paid to a Foreign Country on Retirement Income Tax Credit	Individuals may claim a credit for income taxes paid to a foreign country on pension or retirement income derived from employment in a foreign country. The retirement income must be included in Virginia taxable income on the income tax return to which this credit is applied.	1998	January 1, 1998	N/A	To prevent the double taxation of foreign retirement income by Virginia and a foreign country	\$67,445	\$74,831	\$88,403
§ 58.1-339.6	Political Candidate Contribution Tax Credit	This credit is offered to individuals for the amount contributed to a candidate in one or more primary, special or general elections for local or state office held in the Commonwealth in the taxable year in which the contributions are made.	1999	January 1, 2000	N/A	To encourage Virginians to give money to candidates running for local or statewide office in Virginia	\$177,531	\$279,273	\$252,854

* Due to the small number of returns, we are unable to disclose the exact amount of credit taken.

VIRGINIA CORPORATE INCOME TAX SUBTRACTIONS AND DEDUCTIONS

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions or Deductions Claimed		
							2000	2001	2002
Business/Economic Development									
§ 58.1-402(C)(3)	Domestic International Sales Corporation Subtraction	The taxpayer may subtract the dividends of a Domestic International Sales Corporation if 50% or more of its income was assessable for the preceding year or the last year in which the corporation had income under the income tax laws of Virginia.	1976	January 1, 1976	N/A	This is obsolete as DISC's were replaced by Foreign Sales Corporations in 1985	Data Not Available	Data Not Available	Data Not Available
§ 58.1-402(C)(5)	Foreign Dividend Gross-Up Subtraction	The taxpayer may subtract any amount included because of the operation of the foreign dividend gross-up provision of the Internal Revenue Code. When a domestic corporation elects to take the Foreign Tax Credit, the credit includes a part of foreign taxes paid by a foreign corporation from which it has received dividends. However, the domestic corporation must "gross up" the dividend income by including the foreign taxes paid by the foreign corporation and for which it is claiming a federal credit.	1974	January 1, 1973	N/A	To eliminate "phantom" income not received by the corporation, but included in federal taxable income as a condition of taking the federal credit for foreign income taxes	Data Not Available	Data Not Available	Data Not Available
§ 58.1-402(C)(7)	Subpart F Income Subtraction	The taxpayer may subtract any amount of Subpart F income required to be included in gross income under the Internal Revenue Code. Subpart F income is comprised of income received by certain controlled foreign corporations, such as income from insurance or reinsurance of U.S. risks, foreign base company income and income relating to international boycotts and other violations of public policy.	1981	January 1, 1981	N/A	To eliminate "phantom" income of certain foreign subsidiaries not received by the corporation	Data Not Available	Data Not Available	Data Not Available
§ 58.1-402(C)(8)	Foreign Source Income Subtraction	The taxpayer may subtract any amount included in his federal taxable income that is foreign source income as defined in Va. Code § 58.1-302.	1981	January 1, 1981	1995	To attract corporate headquarters	Data Not Available	Data Not Available	Data Not Available

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions or Deductions Claimed		
							2000	2001	2002
§ 58.1-402(C)(10)	Dividend Subtraction	The amount of any dividends received from corporations may be subtracted when the corporation owns 50% or more of the voting stock.	1981	January 1, 1981	N/A	To relieve multiple taxation of corporate income	Data Not Available	Data Not Available	Data Not Available
§ 58.1-402(C)(14)	Research And Development Expenses Subtraction	A subtraction is allowed for the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but not deducted, because the taxpayer elected to receive a research tax credit. NOTE: The federal research and development credit expired on June 30, 2004. However, it is likely that Congress will retroactively extend it.	1994	January 1, 1995	N/A	To compensate for the disallowance of certain expenses on the federal return when a federal credit is claimed	Data Not Available	Data Not Available	Data Not Available
§ 58.1-402(C)(18)	Income Received as a Result of Payments Made Under the Tobacco Settlement Subtraction	Income received as a result of the "Master Settlement Agreement," the National Tobacco Grower Settlement Trust and the Tobacco Loss Assistance Program may be subtracted by tobacco farmers, any person holding a tobacco marketing quota or tobacco farm acreage allotment under the Agricultural Adjustment Act of 1938 or any person having the right to grow tobacco pursuant to such a quota or allotment.	2000	January 1, 1999	N/A	To prevent the taxation of income received from payments as a result of the MSA and other programs	Data Not Available	\$32,488,767*	\$28,635,207*
§ 58.1-402(C)(19)	Avian Influenza Indemnification Payments Subtraction	The taxpayer may subtract the indemnification payments received by contract poultry growers and table egg producers from the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low pathogenic avian influenza in 2002. This subtraction expires on January 1, 2005.	2003	January 1, 2002	N/A	To prevent the taxation of income received from the U.S. Dept. of Agriculture indemnifying farmers from the avian flu outbreak	Not In Effect	Not In Effect	Data Not Available

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions or Deductions Claimed		
							2000	2001	2002
§ 58.1-402(C)(20)	Gains from Peanut Quota Buyout Program Subtraction	The taxpayer may subtract gain recognized as a result of the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002. If the payment is received in installment payments, the entire gain may be subtracted. However, if the payment is received in a lump sum, 20% of the gain may be subtracted and the taxpayer may deduct an equal amount in each of the 4 succeeding taxable years.	2003	January 1, 2002	N/A	To prevent the taxation of income received from the federal buyout of peanut quotas	Not In Effect	Not In Effect	Data Not Available
Deregulation									
§ 58.1-402(C)(17)	Electric Supplier, Pipeline Distribution Company, Gas Utility and Gas Supplier Subtraction	These taxpayers may reduce their taxable income by their "Virginia Tax Basis." The Virginia Tax Basis is the difference between the total book value and the total tax value of the taxpayer's assets. This amount is determined according to the asset values as of the last day of the taxable year preceding the tax year in which the taxpayer became subject to the corporate income tax. The Virginia Tax Basis will be amortized over 30 years using the straight-line method.	1999	January 1, 2001	N/A	To allow utilities to adjust for federal income tax deductions for depreciation while the utilities paid a Virginia tax on gross receipts in lieu of income tax	Data Not Available	Data Not Available	Data Not Available
Education									
§ 58.1-402(C)(15)	Contributions to Public School Construction Subtraction	The total amount contributed to the Virginia Public School Construction Grants Program and Fund may be subtracted.	1998	January 1, 2000	N/A	To encourage contributions to the Public School Construction Grants Program	Data Not Available	\$10,765*	\$4,824*
Environment									
§ 58.1-402(C)(16)	Gain on the Sale of Land for Open-Space Use Subtraction	The taxpayer may subtract gain derived from the sale or exchange of real property or an easement to real property that results in the property or easement being devoted to open-space use for not less than 30 years.	1999	January 1, 2000	N/A	To prevent the taxation of gain derived from the sale of property that results in a conservation easement	Data Not Available	\$865,818*	\$1,521,466*

Code Section	Title	Description	Date Enacted	Date Effective	Date Amended	Rationale	Aggregate Amount of Subtractions or Deductions Claimed		
							2000	2001	2002
Other									
§ 58.1-402(C)(2)	Income from Obligations of the Commonwealth Subtraction	The taxpayer may subtract income derived from obligations or the sale or exchange of obligations of Virginia or any political subdivision or instrumentality of Virginia.	Pre-1971	January 1, 1972	1997	To prevent the taxation of income from bonds issued by the Commonwealth	Data Not Available	\$8,870,423*	\$5,632,953*

* Data includes information regarding subtractions or deductions taken by individuals.

NOTE: The estimates contained in these tables show the actual amounts claimed on income tax returns. These amounts do not represent the actual fiscal impact associated with each preference. In order to determine final estimates for any of the items listed, additional analysis would be required.

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
FY 93-94	Green Bay Packaging	Frederick County	\$51,670	\$30,000,000	200	Sewer and stream relocation work	\$100,000	
FY 93-94	DuPont	Waynesboro	358,310	100,000,000	100	Truck access and water/sewer improvements	391,000	
FY 93-94	Bristol Compressor	Washington County	350,000	10,000,000	440	Support construction of a new sewer line	600,000	
FY 93-94	Ross Laboratories	Altavista	250,000	20,000,000	60	Expansion of sewage pump station	250,000	
FY 93-94	Vitramon	Roanoke	350,000	21,000,000	265	Reduce cost of building construction	350,000	
FY 93-94	ASAA Technologies	Russell County	350,000	7,900,000	225	Loan converted to grant	500,000	
FY 93-94	Overnite Transportation	Richmond	200,000	11,500,000	290	Public infrastructure improvements	435,000	
FY 93-94	Connex Pipe Systems	Botetourt County	53,932	7,000,000	200	Extension of sewer service	75,000	
FY 93-94	R. R. Donnelley	Rockingham County	170,000	40,000,000	250	Employee training facilities, automobile parking & trailer parking	257,000	
FY 93-94	Aurora Flight Services	Manassas	150,000	5,500,000	50	Site development, grading, water & sewer connection	470,000	
FY 93-94	Yokohama Rubber	Salem	135,000	20,000,000	45	Site preparation (grading and utility extension)	161,667	
FY 93-94	Lea Industries	Smyth County	108,329	8,000,000	150	Grant to Smyth Co. IDA to assist w/ offset of relocation expenses	150,000	
FY 93-94	Hirshfeld Steel	Campbell County	50,000	4,000,000	60	Partially offset cost of new equip. and facility upgrade	50,000	
FY 93-94	Dan River	Danville	850,000	26,100,000	760	Assistance with grading costs	650,000	
FY 93-94	Ross Laboratories	Altavista	800,000	88,000,000	200	Site preparation, access road upgrade, right of way purchase	2,718,000	
FY 93-94	Hanover Direct ^f	Roanoke County	350,000	18,100,000	1,361	Site development	607,785	
FY 93-94	Brunswick Container ^p	South Hill	245,000	7,900,000	50	Loading dock; parking; sprinkler system; waterline upgrade	193,000	
FY 93-94	Virginia Motorsports Park	Dinwiddie County	200,000	7,000,000	77	Water & sewer utility improvements & connect. & site develop.	410,000	
FY 93-94	Dettra Flag	Halifax County	150,000	5,500,000	45	Construction/buildout of publicly-owned building	305,490	
FY 93-94	Automotive Industries	Covington	100,000	3,200,000	28	Assist City of Covington in acquiring facility for plant expansion	100,000	
FY 95	Volvo-GM ^l	Pulaski County	5,000,000	208,100,000	200	Site improvements	3,000,000	
FY 93-94	Facelifters Home Systems	Charles City County	50,000	2,535,000	100	Asphalt paving and concrete pads	50,000	
FY 93-94	CFW Communications	Clifton Forge/Waynesboro	200,000	2,770,000	220	Site preparation and finishing of shell building	368,800	
FY 93-94	B. A. Mullican Lumber	Wise County	200,000	17,200,000	275	Site development	1,150,000	
FY 93-94	Hill Phoenix	Chesterfield County	350,000	10,000,000	200	Assist with site acquisition and development	425,000	
FY 93-94	American Buildings	Mecklenburg County	224,000	11,131,000	200	Site development, paving, improvements to shipping dock area	224,000	
FY 93-94	Georgia-Pacific	Campbell County	400,000	60,000,000	125	Site development	400,000	
FY 93-94	Belding-Hausman/Atlantic Dehydration	Emporia	400,000	3,000,000	75	Electrical upgrade/assist with land acquisition or buildout	450,000	
FY 95	Westvaco	Chesterfield County	125,000	10,000,000	110	Providing fiber-optic cable service	125,000	
FY 95	Electro-Mechanical	Bristol	250,000	12,100,000	276	Site acquisition	633,510	
FY 93-94	Diversity Food Processing	Petersburg	435,000	16,000,000	30	Site acquisition and preparation, transportation improvements	592,000	
FY 93-94	Macro Plastics	Warren County	225,000	20,000,000	50	Rail extension	325,000	
FY 95	Kraft General Foods/Lender's Bagels	Frederick County	100,000	25,000,000	140	Site preparation and development	100,000	
FY 95	Rex-Rosenlew	Staunton	150,000	4,390,195	50	Building modifications	150,000	
FY 96	Kentucky Derby Hosiery	Carroll County	300,000	7,125,000	200	Complete build-out of the Carroll County shell building	464,500	
FY 95	Parkdale Mills ²	Carroll County	3,000,000	170,000,000	350	Purchase of site, site development and water storage tank	3,950,000	

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
FY 95	Boar's Head Provisions	Greensville County	\$135,000	\$4,000,000	50	On-site transportation needs	\$200,000	
FY 95	Sartomer Company	Pittsylvania County	250,000	39,000,000	50	Site clearing, grading and preparation	340,000	
FY 95	Fleetwood Homes	Henry County	250,000	6,300,000	250	Site preparation	667,240	
FY 95	Abell Industries	Petersburg	167,000	2,500,000	105	Grant to Petersburg IDA to assist with building improvements	588,000	
FY 95	Wolverine Gasket and Manufacturing Comp	Montgomery County	81,250	12,000,000	55	Land acquisition	97,250	
FY 95	ITT Teves	Culpeper County	75,000	15,000,000	60	Site preparation and construction of facility	140,000	
FY 95	Georgia-Pacific/Corrugated Division	Bedford County	200,000	119,528,000	35	Bridge construction and road improvements	400,000	
FY 95	Summit Dimension Products ^d	Smyth County	225,000	6,500,000	150	Site improvements/ defray land costs incurred by Smyth Cnty IDA	420,000	
FY 95	Oji-Yuka Synthetic Paper (Yupo)	Chesapeake	200,000	90,000,000	100	Site development; transportation improvements; drainage	650,000	
FY 95	T.D. Wheel of Virginia	Saltville	60,000	2,820,000	100	Site preparation	137,700	
FY 95	Arkay Packaging	Botetourt County	122,200	7,000,000	140	Site preparation	272,000	
FY 95	Bacova Guild	Alleghany County	350,000	5,000,000	120	Site work/ building construction/ relocation expenses	810,000	
FY 95	Drake Extrusion (Readicut Holdings USA)	Henry County	200,000	12,000,000	120	Site improvements and grading	200,000	
FY 95	GE Fanuc	Albemarle County	150,000	33,000,000	150	Training facilities	150,000	
FY 95	TWA	Norfolk	450,000	14,800,000	500	Used by City for equipment and facility upfit for reservation center	1,000,000	
FY 95	Lillian Vernon Corporation	Virginia Beach	100,000	36,000,000	350	Installation of traffic signal sooner that traffic counts warrant	2,000,000	
FY 95	UPS	Newport News	500,000	10,000,000	775	Additional parking	8,530,000	
FY 95	Pen-Tab Industries	Warren County	200,000	9,750,000	310	Site development	644,500	
FY 95	Ericsson Inc.	Lynchburg	250,000	35,000,000	440	Extension of Harvard Street	300,000	
FY 96	Toray Plastics ³	Warren County	350,000	50,000,000	120	Site development	1,550,000	
FY 95	American Type Culture Collection ⁴	Prince William County	3,000,000	10,500,000	226	Site work; land acquisition; road improvements	11,200,000	
FY 96	Mid Continent Nail Corporation	Radford	60,000	2,500,000	75	Installation of electrical and sprinkler systems	115,000	
FY 96	Target ⁵	Augusta County	1,200,000	75,000,000	400	Site acquisition and development, transportation access	2,088,450	
FY 96	A. O. Smith	Botetourt County	300,000	37,000,000	130	Site preparation	2,485,340	\$13/hr
FY 96	B. I. Chemicals	Petersburg	250,000	19,300,000	45	Site improvements	880,797	\$45,000
FY 96	Intertape Polymer	Pittsylvania County	200,000	20,000,000	66	Site development	378,800	\$10.51/hr
FY 96	BGF Industries	South Hill	225,000	30,000,000	150	Clearing and grading; storm drainage; paving	592,200	\$9.50/hr
FY 93-94	Avis ⁶	Virginia Beach	500,000	15,000,000	460	Site preparation	2,250,000	
FY 96	Morrison Molded Fiber Glass	Washington County	250,000	5,000,000	200	Assist with write-down of property costs; site preparation	700,000	\$20,000
FY 96	Tri-Boro Shelving	Prince Edward County	100,000	3,500,000	50	Site development	224,760	\$19,000
FY 96	Dan River	Danville	250,000	12,000,000	500	Site preparation	650,000	\$24,000
FY 96	Alliant Technologies	Montgomery County	100,000	6,800,000	130	Site preparation	150,000	\$11.46/hr
FY 96	Gateway 2000	Hampton	1,000,000	18,000,000	1,000	Site preparation; assist in land cost reduction	4,500,000	
FY 96	MCI Telecommunications	Newport News	450,000	20,000,000	1,000	Building improvements	550,000	\$7.00/hr
FY 96	Barr Laboratories	Bedford County	127,500	14,000,000	100	Site improvements	127,500	\$10.30/hr
FY 96	Capital One	Henrico County	100,000	77,000,000	940	Site preparation costs	166,000	\$28,000

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
FY 96	Scholle Corporation	Smyth County	\$107,990	\$10,100,000	145	Site development	\$163,500	\$10.50/hr
FY 96	R.R. Donnelley	Roanoke County	460,000	101,000,000	300	On site improvements	2,706,729	\$12.78/hr
FY 96	Kohl's Corporation	Frederick County	275,000	20,000,000	350	Buy-down of land costs	450,000	\$9.50/hr
FY 96	Sherwood Brands, Inc.	Chase City	100,000	7,000,000	100	Buy-down on purchase price of building	125,000	\$8.50/hr
FY 96	Vaughan Furniture Company	Patrick County	350,000	10,940,000	280	Grading; site preparation	400,000	\$15,600
FY 96	RGC Mineral Sands	Sussex County	100,000	9,000,000	69	On-site improvements	421,000	\$30,000
FY 96	Meadville Forging	Buchanan (Town)	175,000	35,000,000	130	Site preparation	400,000	\$13.50/hr
FY 96	Vaughan-Bassatt	Galax	75,000	4,166,700	50	Site development	233,490	\$15,000
FY 97	Von Holtzbrinck	Orange County	350,000	27,000,000	314	Site preparation	587,500	\$15,200
FY 96	Frito-Lay	Lynchburg	1,000,000	80,000,000	400	Site development	5,250,000	\$35,000
FY 97	Family Dollar	Warren County	200,000	40,000,000	400	Site development	1,150,000	\$9.00/hr
FY 96	Reynolds Wheel	Russell County	400,000	27,000,000	125	Grant and forgivable loan to Russell Co. IDA for building dev.	2,936,432	\$28,000
FY 97	Marion Composites	Marion (Smyth Co.)	55,000	2,748,000	37	To Smyth Co. IDA to combine w/an equal amt. and lend to Co.	55,000	\$25,000
FY 97	Gilbert Lumber	Scott County	250,000	10,000,000	80	Site development	250,000	\$10.00/hr
FY 97	Iceland Seafood	Newport News	500,000	19,000,000	350	Grant to Newport News IDA to assist w/ facility location	1,187,776	\$10,00/hr
FY 97	Nippon Wiper Blade	Dinwiddie County	243,000	15,000,000	200	Site acquisition and development	448,000	\$8.00/hr
FY 97	New Millennium Studios	Petersburg	275,000	11,000,000	90	Land acquisition	375,000	\$23,940
FY 97	Hershey Foods	Augusta County	200,000	46,000,000	85	Grant to August Cnty IDA to assist w/location of new product line	200,000	\$27,000
FY 97	A. Wimpfheimer & Bros.	Blackstone (Nottoway Co.)	350,000	2,500,000	200	Grant to town of Blackstone IDA to assist w/ site improvements	525,000	\$7.50/hr
FY 97	Diebold (Danville)	Danville	300,000	8,000,000	300	Site preparation	486,000	\$9.00/hr
FY 97	Diebold (Staunton)	Staunton	100,000	12,000,000	100	Site preparation	621,999	\$9.00/hr
FY 97	Dollar Tree	Chesapeake	200,000	26,000,000	125	Site preparation and road improvements	500,000	\$20,000
FY 97	Boise Cascade	Bristol	350,000	7,000,000	450	Build-out costs for publicly-owned shell building	975,000	\$7.75/hr
FY 97	Modular Wood Systems	Patrick County	37,500	2,700,000	75	Site and building acquisition	37,500	\$9.00/hr
FY 97	Marley Mouldings	Smyth County	100,000	10,000,000	96	Building and site development	100,000	\$10.00/hr
FY 97	Bell Atlantic Plus	Hampton	200,000	25,900,000	700	Leasehold improvements	200,000	\$7.00/hr
FY 97	Maple Leaf Bakery	Roanoke (City)	200,000	32,000,000	200	Site preparation	1,440,367	\$9.50/hr
FY 97	Atlantic Coast Airlines	Loudoun County	175,000	10,000,000	300	Site preparation; aircraft apron	2,000,000	\$34,000
FY 98	Chubb Corporation	Chesapeake	300,000	10,000,000	256	Site acquisition and preparation	372,000	\$29,800
FY 97	Nexus Communications	Dickenson County	350,000	4,340,415	400	Site development and building construction	2,355,415	\$15,500
FY 97	Creative Playthings	Emporia	70,000	3,870,000	97	Site preparation	71,200	\$7.00/hr
FY 98	Gilbert Lumber	Scott County	50,000	5,400,000	25	Site development	50,000	\$10.00/hr
FY 98	Jones Apparel	Town of South Hill	75,000	10,000,000	175	Site improvements	402,200	\$7.00/hr
FY 98	Ontario Store Fixtures	Nottoway County	150,000	5,675,000	250	Grant to Nottoway County IDA to assist w/ building renovations	150,000	\$7.50/hr
FY 98	Kingston-Warren	Wytheville (Wythe Co.)	100,000	4,135,000	38	Site preparation	100,000	\$14.93/hr
FY 98	Magnolia Manufacturing	Carroll County	100,000	17,000,000	40	Site preparation; storm drainage; parking facilities	346,975	\$8.00/hr

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
FY 98	Kollmorgen Motion Technologies	Montgomery County	\$100,000	\$3,000,000	60	Site preparation	\$344,500	\$40.000
FY 98	Ericsson	Lynchburg	800,000	25,000,000	150	Grading, paving, drainage, lighting, related site development	300,000	\$12.00/hr
FY 98	Bell Atlantic	Arlington County	300,000	10,000,000	500	Site improvements	1,080,000	\$52.000
FY 98	Chaparral Steel	Dinwiddie County	3,000,000	400,000,000	400	Site development	6,151,925	\$35.000
FY 98	Ferguson Enterprises	Warren County	225,000	22,000,000	125	Site development	591,220	\$8.50/hr
FY 98	Reynolds Wheels	Russell County	750,000	26,000,000	67	Building construction	2,936,432	\$28.000
FY 98	GEICO	Virginia Beach	850,000	13,350,000	800	Site improvements	1,500,000	\$34.638
FY 98	Cresstale Limited	Franklin	200,000	6,000,000	175	Grant to Franklin IDA to assist with financing	229,000	\$9.00/hr
FY 98	Value City Furniture	Caroline	350,000	18,500,000	200	Site development and acquisition	670,000	\$23.500
FY 98	Howmet	Hampton	200,000	30,500,000	196	Grant to IDA to assist with site preparation and related activity	200,000	\$14.42/hr
FY 99	First Data Corporation	Chesapeake	300,000	15,000,000	500	Infrastructure needs	700,000	\$20.000
FY 98	Hollingsworth and Vose	Floyd County	50,000	4,800,000	25	Site preparation; parking	50,000	\$12.00/hr
FY 98	Bassett Furniture	Henry County	200,000	6,800,000	75	Site and building preparation; training	670,376	\$8.00/hr
FY 98	Extraction Technologies	Brunswick County	100,000	8,000,000	61	Build-out of publicly-owned shell building	107,500	\$9.00/hr
FY 98	Motorola	Goochland County	3,250,000					
FY 99	Carmar	Shenandoah County	200,000	35,000,000	150	Development of well for refrigerator units and installation of water ma	1,300,000	\$18.000
FY 99	Coastal Training	Virginia Beach	500,000	14,000,000	366	Site preparation and traffic improvements	500,000	\$27.000
FY 99	Innotech	Roanoke City	2,000,000	75,000,000	600	Site preparation	9,174,611	\$13.50/hr
FY 99	Wheeling-Pittsburgh	Greensville County	100,000	6,700,000	35	Site preparation	165,000	\$30.000
FY 99	Kraft	Frederick County	250,000	14,000,000	250	Grant to IDA to assist with building renovations	250,000	\$8.50/hr
FY 99	Vaughan-Basset ^f	Smyth County	75,000	8,100,000	96	Building improvements	175,000	\$7.00/hr
FY 99	LKM Industries	Alleghany County	250,000	7,000,000	125	Site development	730,000	\$35.000
FY 99	Hewlett-Packard	Henrico County	650,000	35,400,000	700	Traffic improvements	650,000	\$38.000
FY 99	Aspen Motion Technologies	Radford	250,000	9,225,000	171	Site improvements	315,000	\$26.000
FY 99	Bristol Compressors	Washington County	500,000	20,000,000	350	Site development	541,700	\$17.000
FY 99	Energy Recovery	Northampton County	170,000	2,500,000	50	Road and utility construction	200,000	\$27.000
FY 00	Towers Perrin	Chesapeake	600,000	32,600,000	1,000	Site acquisition and site preparation	600,000	\$25.000
FY 99	MCI/WorldCom	Loudoun County	2,000,000	45,000,000	7,000	Road construction	3,082,000	\$50.000
FY 99	Koyo Seiko	Botetourt County	600,000	25,000,000	120	Site preparation	3,806,000	\$11.50/hr
FY 99	Volvo	Pulaski County	3,000,000	148,300,000	1,277	Site improvements and grant to IDA to assist with equipment	31,000,000	\$35.090
FY 99	Gateway ^o	Hampton	1,282,176	26,700,000	1,200	Site acquisition and infrastructure	1,500,000	\$22.580
FY 00	HP Hood	Frederick County	500,000	64,300,000	170	Site acquisition and preparation	500,000	\$11.41/hr
FY 99	McAllister Mills	Grayson County	100,000	4,410,000	30	Completion of publicly-owned building; storm drainage; utilities; parking	260,000	\$9.00/hr
FY 99	Rowe Furniture	Montgomery County	250,000	15,000,000	170	Site improvements	338,000	\$10.00/hr
FY 99	Annin	Halifax County	100,000	2,500,000	160	Site improvements	200,000	\$8.00/hr
FY 99	America Online	Prince William County	500,000	500,000,000	175	Land acquisition; site development; infrastructure improvements	567,000	\$60.000
FY 99	New Dominion Pictures	Suffolk	340,000	5,500,000	130	Site/building acquisition; infrastructure improvements	340,000	\$43.000
FY 99	Springs Industries	Henry County	500,000	10,600,000	211	Site preparation	500,000	\$9.00/hr

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
FY 99	Deere & Co.	James City County	\$1,000,000	\$35,000,000	300	Land acquisition; site improvements	\$2,984,000	\$24,750
FY 00	American of Martinsville	Henry County	600,000	5,200,000	200	Grant to IDA to assist with location	666,228	\$13.00/hr
FY 00	Stanley Furniture	Henry County	600,000	15,000,000	300	Grant to IDA to assist with location	848,312	\$10.00/hr
FY 00	Nextel ⁰	Hampton	236,000	14,600,000	525	Site acquisition and infrastructure	750,000	\$25,000
FY 99	Sherwood Brands	Charlotte County	150,000	4,000,000	150	Site preparation	155,200	\$14,000
FY 99	E-Toys	Pittsylvania County	200,000	14,000,000	330	Site preparation	200,000	\$20,000
FY 99	Paramont/21st Century Containers	Washington County	200,000	6,000,000	120	Building improvements	200,000	\$9.60/hr
FY 99	Toll Integrated Systems	Emporia	200,000	5,600,000	100	Site and building improvements	215,780	\$8.00/hr
FY 99	Ball Corporation	Bristol	100,000	11,000,000	40	Grant to IDA to assist with equipment relocation/building retrofit	100,000	\$16.00/hr
FY 99	Perdue	Prince George County	300,000	25,000,000	175	Site acquisition and preparation	390,000	\$13.39/hr
FY 99	Tempur-Pedic	Scott County	550,000	14,000,000	265	Site acquisition/improvements/financing assistance	652,000	\$8.50/hr
FY 00	Capital One	Spotsylvania County	100,000	20,000,000	1,200	Site preparation and infrastructure	100,000	\$25,000
FY 00	Intel	Fairfax County	200,000	130,000,000	250	Traffic and site improvements	200,000	\$50,000
FY 00	Morrill Motors	Washington County	65,000	3,500,000	65	Site preparation and building retrofit	65,000	\$6.50/hr
FY 00	Goodyear*	Danville	200,000	90,788,000	50	Site preparation and equipment for industrial training center	535,000	\$48,000
FY 00	Utility Trailer	Washington County	500,000	14,000,000	300	Site preparation	600,000	\$20,800
FY 00	Covad Communications Group	Prince William County	807,000	35,000,000	1,016	Land acquisition; site development; infrastructure improvements	854,630	\$51,000
FY 00	B.I. Chemicals	Petersburg	400,000	52,000,000	104	Site preparation	400,000	\$47,500
FY 00	Nautica Enterprises	Henry County	1,500,000	40,000,000	375	Site preparation	2,386,378	\$8.50/hr
FY 00	Engineered Building Components	Nottoway County	300,000	13,000,000	125	Site development	1,200,000	\$27,500
FY 00	Fisher Scientific International	Frederick County	250,000	30,000,000	50	Site acquisition	250,000	\$20.00/hr
FY 00	SMI Steel	Prince Edward County	350,000	6,500,000	150	Site development	636,220	\$8.50/hr
FY 00	Von Holtzbrinck	Orange County	100,000	10,000,000	50	Site preparation	415,000	\$16,078
FY 00	BWX Technologies	Campbell County	485,000	41,100,000	320	Construction of water line	1,024,000	\$12.85/hr
FY 00	Echostar	Montgomery County	750,000	16,000,000	1,400	Grant to County to assist with location of facility	841,000	\$12.13/hr
FY 00	First Data	Chesapeake	200,000	10,000,000	100	Infrastructure improvements	200,000	\$25,000
FY 00	Raleigh Mine	Tazewell County	350,000	5,000,000	200	Site preparation and improvements	500,000	\$8.50/hr
FY 00	Wal-Mart	James City County	700,000	50,000,000	400	Site acquisition and development; utility extension	751,200	\$9.50/hr
FY 00	Nationwide Homes	Martinsville	150,000	3,300,000	170	Site preparation	225,000	\$9.00/hr
FY 00	Ace Hardware	Prince George County	300,000	35,000,000	300	Infrastructure and road improvements	600,000	\$9.00/hr
FY 00	O'Sullivan Industries	Halifax County	100,000	11,000,000	100	Grant to Halifax Co. IDA to assist with construction of expansion	100,000	\$8.00/hr
FY 01	Dominion Semiconductor (Phases I and II)	Manassas	1,000,000	700,000,000	600	Grant to Manassas IDA to assist with plant modification; workforce tr	1,000,000	\$54,000
FY 00	Sykes Enterprises	Wise County	1,000,000	14,250,000	432	Loan provided to the Co. to assist with activities required to locate th	1,500,000	\$16,204
FY 01	Jones Apparel Group	Mecklenburg County	53,000	11,000,000	175	Construction of retaining wall	90,920	\$8.50/hr
FY 01	ACT MicroDevices	Montgomery County	500,000	25,000,000	300	Development and build-out of the facility	500,000	\$18,750
FY 01	Altec Industries	Botetourt County	400,000	12,500,000	150	Site preparation	989,000	\$10.00/hr
FY 01	CP Films, Inc.	Henry County	200,000	35,000,000	52	Grant to IDA to assist with location	700,000	\$12.50/hr
FY 01	Evercel	Newport News	500,000	25,000,000	180	Grant to IDA to assist with location	618,000	\$30,533

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
FY 01	EMCO	Page County	\$600,000	\$9,800,000	343	Build out of facility	\$731,425	\$9.00/hr
FY 01	Lawson Mardon	Chesterfield County	450,000	45,000,000	150	Land acquisition; site prearation	450,000	\$18.00/hr
FY 01	Cost Plus	Isle of Wight County	300,000	20,900,000	160	Site preparation	1,700,000	\$10.40/hr
FY 01	DaiEi Papers	Chesapeake	200,000	10,500,000	105	Expand and upfit existing building	200,000	\$37,000
FY 01	NTELOS	Portsmouth	400,000	6,200,000	250	Assist with buildout and other building improvements	1,825,470	\$9.25/hr
FY 01	Somic Ishikawa (Brewer Automotive)	Bland County	75,000	5,300,000	25	Buydown land costs for company	245,000	\$28,080
FY 01	TeleCorp PCS	Russell County	450,000	4,600,000	300	Land and building costs	450,763	\$21,070
FY 01	Dendrite International	Chesapeake	500,000	30,000,000	335	Building and site improvements	950,000	\$40,000
FY 01	Capital One	Goochland County	3,000,000	702,210,268	8,250	Site infrastructure costs at West Creek	3,000,000	\$48,435
FY 01	America Online	Prince William County	600,000	641,000,000	1,325	Land acquisition; site development; infrastructure improvements	659,500	\$61,900
FY 01	Sara Lee Activewear	Henry County	1,300,000	25,000,000	303	Site preparation; building construction	1,416,446	\$10.34/hr
FY 01	Ethan Allen	Pulaski County	100,000	12,500,000	69	Grant to IDA to assist with workforce training	100,000	\$24,000
FY 01	Investors Corporation	Martinsville	200,000	12,600,000	380	Site development	392,360	\$9.00/hr
FY 01	White Oak Semiconductor	Henrico County	3,000,000	1,100,000,000	1,400	Site preparation	3,036,662	\$55,000
FY 01	Entrodyne/Heat Transfer Specialties	Buena Vista	100,000	3,500,000	250	Grant to the IDA to assist with relocation	100,000	\$29,203
FY 01	Lutron Electronics	Hanover County	125,000	6,140,000	105	Site and building infrastructure and improvements	125,000	\$26,541
FY 01	Universal Companies	Washington County	100,000	3,000,000	74	Site preparation	267,220	\$9.00/hr
FY 01	ERNI Components	Chesterfield County	500,000	98,400,000	550	Site acquisition and improvements	500,000	\$36,000
FY 01	Ford Motor Company	Norfolk	500,000	375,000,000	200	Site preparation and improvements	1,200,000	\$50,000
FY 01	Carlisle Motion Control Industries	South Hill	300,000	15,000,000	103	Building retrofit	332,000	\$11.69/hr
FY 01	B.I. Chemicals	Petersburg	120,000	0	0	Apprenticeship program; in conjunction with FY 00 expansion	150,000	\$9.50/hr
FY 01	Harris Tarkett (Stuart Flooring)	Campbell County	150,000	3,500,000	100	Site acquisition	120,000	\$47,500
FY 01	Zim-American Israeli Shipping Co.	Norfolk	100,000	6,200,000	235	Grant to the IDA to offset site and building improvements	100,000	\$36,000
FY 01	Bristol Brass	Bristol	175,000	4,500,000	125	Site preparation	179,500	\$25,000
FY 01	Sara Lee Coffee & Tea	Suffolk	200,000	78,000,000	100	Site and infrastructure improvements	500,000	\$46,000
FY 01	Symantec	Newport News	1,200,000	22,000,000	300	Land, site preparation, and grant to IDA to assist with location	1,400,000	\$70,000
FY 01	Wal-Mart	Louisa County	500,000	40,000,000	600	Site acquisition	925,000	\$10/hr
FY 02	Ferguson Enterprises	Newport News	750,000	20,550,000	250	Land acquisition and infrastructure	875,000	\$32,500
FY 02	LaJobi Industries	Nottoway County	75,000	4,000,000	110	Site improvements	75,000	\$10.20/hr
FY 02	Bristol Compressors	Washington County	250,000	45,000,000	209	Site improvements	250,000	\$11/hr
FY 02	Alfa-Laval	Henrico County	200,000	10,000,000	100	Site preparation and improvements; training grant	100,000	\$40,000
FY 02	Advance Auto Parts	Roanoke City	670,000	14,209,000	234	Building improvements	743,000	\$30,769
FY 02	BAE Systems	Fairfax County	50,000	51,633,000	999	Pedestrian sidewalk	50,000	\$80,000
FY 02	Basalt Fibers	South Hill	50,000	8,500,000	55	Site preparation	480,960	\$8/hr
FY 02	Novozymes Biologicals	Roanoke County	100,000	11,900,000	25	Infrastructure development	1,920,574	\$59,000
FY 02	Unique Industries	Pittsylvania County	250,000	6,100,000	420	Grant to Pittsylvania IDA to assist with equipment relocation	261,700	\$17,805
FY 02	Kraft Foods	Frederick County	200,000	29,000,000	75	Grant to Frederick IDA to assist with expansion	200,000	\$13/hr
FY 02	Atlanta Pulp and Paper	Brunswick County	450,000	5,300,000	282	Grant to Brunswick IDA to assist with location	450,000	\$8.50/hr

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
FY 02	Magnolia Manufacturing (GEOF) ¹	Carroll County	\$59,947	\$10,000,000	25	Workforce training	\$150,000	\$9.40/hr
FY 02	Unilever Bestfoods	Suffolk	100,000	15,000,000	65	Grant to the Suffolk IDA to assist with expansion	225,000	\$38,000
FY 02	Nautica (\$250,000 GEOF)	Henry County	500,000	5,000,000	150	Grant to the Henry County IDA to assist with expansion	370,441	\$36,449
FY 02	Ross Products (GEOF)	Campbell County	100,000	29,000,000	61	Grant to the Campbell Co. IDA to assist with retraining needs	225,000	\$16.20/hr
FY 02	Rubbermaid	Winchester	250,000	45,000,000	250	Grant to the Winchester IDA to assist with expansion	250,000	\$36,387
FY 02	Cerxon Microtechnologies	Henry County	200,000	6,570,000	250	Grant to the Henry County IDA to assist with expansion	371,087	\$14/hr
FY 02	Barr Laboratories	Bedford County	200,000	7,000,000	75	Site improvements	200,000	\$15.73/hr
FY 02	Power Systems International	Rockbridge County	50,000	2,500,000	64	Grant to the Rockbridge IDA to assist with relocation	50,000	\$14/hr
FY 02	Star Scientific	Mecklenburg County	300,000	49,900,000	315	Building upfit and establishment of new production line	368,500	\$12.50/hr
FY 02	Keystone Dyeing and Finishing	Orange County	150,000	2,500,000	125	Grant to the Orange County IDA to assist with location	150,000	\$13/hr
FY 02	Target	Suffolk	1,000,000	65,000,000	500	Grant to the Suffolk IDA to assist with location	1,500,000	\$13.25/hr
FY 02	Trinity Packaging	Franklin County	450,000	9,100,000	300	Site acquisition and development	1,800,000	\$9/hr
FY 02	Kentucky Derby Hosiery	Carroll County	100,000	10,600,000	72	Grant to the Campbell County IDA to assist with expansion	100,000	\$10.85/hr
FY 02	U.S. Foodservice	Salem	300,000	22,000,000	200	Construction of a new access road to facility	300,000	\$34,000
FY 02	Eli Lilly	Prince William County	2,250,000	426,000,000	705	Grant to the Prince William IDA to assist with location	2,980,000	\$44,400
FY 02	Knauss Foods	Henry County	180,000	5,700,000	105	Site preparation	1,664,342	\$8.38/hr
FY 02	Narroflex	Patrick County	200,000	9,000,000	205	Building improvements	425,000	\$10/hr
FY 02	Essel Propack	Danville	200,000	17,650,000	80	Grant to the Danville IDA to assist with location	442,000	\$12/hr
FY 03	Northeast Cooperative	Warren County	200,000	53,100,000	388	Site acquisition	1,347,000	\$27,587
FY 03	Sherwood Brands	Mecklenburg County	125,000	2,750,000	275	Site preparation and building improvements	181,000	\$8.50/hr
FY 03	Greenridge Environmental	Lunenburg County	200,000	9,500,000	165	Site preparation	200,000	\$37,500
FY 03	Creative Playthings	Emporia	60,000	2,674,000	30	Site preparation and paving	60,000	\$9.50/hr
FY 03	Lohmann Corporation	Orange County	115,000	5,750,000	30	Grant to the Orange County IDA to assist with location	150,000	\$31,200
FY 03	Klockner Pentaplast	Wythe County	250,000	34,000,000	108	Building construction	250,000	\$34,050
FY 03	American Plastics	Greensville County	120,000	5,300,000	135	Building improvements	478,700	\$27,696
FY 03	Activewear	Henry County	200,000	5,000,000	405	Building and utility improvements	200,000	\$24,298
FY 03	Verizon Communications	Wise County	100,000	3,325,000	61	Build-out of existing building	413,680	\$24,590
FY 03	MeriStar	Arlington County	200,000	13,700,000	142	Infrastructure improvements	250,000	\$74,000
FY 03	Home Depot	Frederick County	150,000	25,000,000	125	Site development	150,000	\$21,840
FY 03	Carry-On Trailer	Westmoreland County	100,000	2,500,000	75	Site improvements	130,200	\$23,712
FY 03	Stihl	Virginia Beach	500,000	60,800,000	200	Infrastructure improvements	700,000	\$35,400
FY 03	AFG Industries	Washington County	120,000	31,000,000	70	Grant to Washington County IDA to assist with location	1,598,564	\$41,543
FY 03	Harvest Pharmaceuticals	Grayson County	50,000	3,300,000	30	Building improvements	50,000	\$26,923
FY 03	Integrity Windows	Roanoke County	500,000	32,000,000	350	Site development	1,000,000	\$23,171
FY 03	Money Mailer	Franklin City	225,000	8,500,000	160	Building improvements	710,621	\$28,579
FY 03	Hudd Distribution Services	Chesapeake	75,000	14,000,000	260	Infrastructure improvements	275,000	\$22,115
FY 03	Metalsa	Botetourt County	150,000	25,000,000	70	Site preparation and improvements	502,538	\$34,941
FY 03	Wal-Mart	Rockingham County	1,500,000	55,000,000	1,000	Site acquisition and development	1,710,042	\$25,000

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
FY 03	Amerigroup	Virginia Beach	\$1,450,000	\$56,000,000	858	Infrastructure improvements	\$2,000,000	\$26,614
FY 03	Intertape Polymer	Pittsylvania County	100,000	5,000,000	50	Site preparation	153,250	\$23,920
FY 03	Carbone Kirkwood	Prince Edward County	167,500	2,710,000	65	Grant to Prince Edward IDA to assist with expansion	178,849	\$23,982
FY 03	Ford Motor Company	Frederick County	75,000	13,300,000	95	Site development	75,000	\$52,400
FY 03	B.I. Chemicals	Petersburg	1,750,000	260,000,000	165	Construction costs for on-site training facility	5,129,500	\$56,000
FY 03	Lineal Technologies/MW Manufacturers	Franklin County	150,000	4,700,000	60	Site development	350,000	\$22,360
FY 03	Framatome	Lynchburg/Campbell Co.	300,000	32,000,000	300	Site improvements	420,000	\$60,247
FY 03	Care Rehab	Charlotte County	100,000	3,060,000	50	Site preparation and build-out of shell building	100,000	\$41,766
FY 03	General Dynamics Armament	Smyth County	300,000	6,500,000	120	Grant to Smyth County IDA to assist with expansion	300,000	\$28,000
FY 04	Siemens VDO Automotive	Newport News	500,000	47,250,000	107	Grant to Newport News IDA to assist with expansion	611,675	\$32,000
FY 04	Schrader Bridgeport	Altavista (Campbell Co.)	75,000	5,100,000	50	Site improvements	218,500	\$29,000
FY 04	Sunshine Mills	Halifax County	60,000	2,500,000	40	Site improvements	85,000	\$25,000
FY 04	R.R. Donnelley and Sons	Lynchburg	50,000	5,000,000	50	Site improvements	31,200	\$50,000
FY 04	Barber & Ross	Frederick County	125,000	11,500,000	100	Site development	150,000	\$31,200
FY 04	Lockheed Martin	Suffolk	50,000	30,000,000	50	Grant to the Suffolk IDA to assist with location	388,000	\$81,500
FY 04	ABB Transformers	Bland County	100,000	3,000,000	75	Grant to Bland IDA to assist with expansion	100,000	\$21,507
FY 04	Cardinal Glass	Vinton (Roanoke Co.)	300,000	23,900,000	200	Site development	1,814,000	\$26,000
FY 04	Wytheville Technologies	Wythe County	150,000	31,000,000	102	Land acquisition	680,000	\$27,498
FY 04	MZM	Martinsville	250,000	4,400,000	150	Write-down costs of shell building	461,838	\$49,700
FY 04	Globaltex	Henry County	150,000	5,246,200	154	Grant to the Henry County IDA to assist with location	224,521	\$22,880
FY 04	Essel Propack	Danville	75,000	10,000,000	50	Build-out of existing building	100,000	\$27,040
FY 04	AES	Arlington County	207,500	5,000,000	115	Build-out of existing building	207,500	\$103,000
FY 04	CMA CGM	Norfolk	200,000	11,511,000	116	Grant to Norfolk EDA to assist with bldg/site improvements	400,000	\$52,000
FY 04	Kollmorgen	Radford	75,000	2,851,000	71	Leasehold improvements	200,000	\$45,986
FY 04	Celanese Acetate	Giles County	150,000	10,000,000	55	Site development	150,000	\$75,000
FY 04	Consolidated Glass & Mirror	Galax	75,000	2,501,000	54	Building improvements	75,000	\$20,342
FY 04	Telvista	Danville	200,000	5,000,000	400	Site and building improvements and preparation	400,000	\$17,701
FY 04	Wachovia Securities	Richmond/Henrico Co.	1,000,000	8,268,000	1,200	Building improvements	1,000,000	\$55,713
FY 04	M&H Plastics	Frederick County	100,000	12,000,000	57	Building improvements	100,000	\$34,736
FY 04	Luna nanoMaterials	Danville	250,000	6,409,000	54	Build-out of facility	250,000	\$39,000
FY 04	MasterBrand Cabinets	Henry County	1,500,000	20,800,000	745	Building acquisition costs/site and building improvements	4,141,250	\$25,844
FY 04	Utility Trailer	Smyth County	200,000	11,500,000	100	Grant to the Smyth County IDA to offset project costs	200,000	\$26,416
FY 04	Aerojet	Orange County	150,000	6,989,000	149	Site development	150,000	\$56,348
FY 04	Blue Ridge Wood Products	Tazewell County	150,000	3,640,000	160	Building improvements	150,000	\$20,509
FY 04	Cost Plus	Isle of Wight County	225,000	27,200,000	190	Site preparation	510,000	\$22,672
FY 04	StarTek	Lynchburg	150,000	5,500,000	542	Grant to the Lynchburg IDA to assist with bldg. improvements	540,000	\$17,473
FY 04	Windsor Mill	Surry County	100,000	6,000,000	70	Site improvements	725,000	\$49,494
FY 04	Maersk/APM Terminals	Portsmouth	500,000	450,000,000	210	Site preparation	715,000	\$70,000

GOVERNOR'S OPPORTUNITY FUND APPROVALS

Fiscal Year	Company	Locality	Amount Approved	Investment	Jobs Created	Purpose	Local Match	Salary/Wage
						⁸ Original grant was for \$150,000; half was returned due to company not meeting thresholds.		
						⁹ Original grant was for \$1,500,000; \$217,824 returned to date due to company not meeting thresholds.		
						¹⁰ Original grant was for \$500,000; portion (\$264,000) was returned due to company not meeting job and investment thresholds.		
						¹¹ Original grant was for \$150,000; portion (\$90,053) was returned due to company not meeting job and investment thresholds.		
						^a Hanover Direct had several facilities in the Roanoke area; this facility closed in 1997; the others remain open.		
						^b Closed in Fall 1997; taken over by Wausau Homes with higher pay rates.		
						^c Closed in October 1998.		
						^d This entity went out of business; the entity and equipment were leased to a second party which employed 70.		
						The second entity is now being acquired by a third company that already has two operations in Smyth County. Upon completion of negotiations, employment will exceed 200.		
						*Because the wage of the new jobs is double the prevailing wage, these jobs are doubled when determining the GOF grant.		

PV SMIG Payments					
Solar Building Systems					
Location:	5432 Bayside Road Exmore, VA 23350				
Production Year	Production Start Date	Payment FY	SBS Watts	SBS Eligibility	SBS Payment
1995	9/1/1995	FY 96	27,184	\$20,388.00	\$20,388.00
1996		FY 98	125,359	\$94,018.91	\$94,018.91
1997#		FY 99	18,282	\$0	\$0
1998		FY 00	197,731	\$148,298.00	\$148,298.00
1999		FY 01	211,976	\$158,981.69	\$158,981.69
Total			580,532	\$421,686.60	\$421,686.60
# Solar Building Systems withdrew its application for CY 1999 production when it was unable to properly document sales.					
BP Solar (formally Solarex)					
Location	Manufacturing Plant (closed December 2002) 3601 LaGrange Pkwy Toano, VA 23168		BP Solar (Headquarters) 630 Solarex Court Frederick, MD 21703		
Production Year	Production Start Date	Payment FY	BP Solar Watts	BP Solar Eligibility	BP Solar Payment
1997	2/20/1997	FY 99	84,739	\$ 63,448.48	\$ 63,448
1998		FY 00	573,421	\$ 430,068.25	\$ 430,068
1999		FY 01	1,313,388	\$ 985,041.00	\$ 985,041
2000*		FY 04**	2,134,093	\$ 1,493,640.64	\$ 1,900,000
2001*		FY 05	3,096,165	\$ 2,284,116.87	\$ 1,877,758
Total			7,201,806	\$ 5,256,315.24	\$ 5,256,316
* Payments were delayed due to BP Solar delays in submitted required documentation of manufacturing and sales and adjustments to appropriations.					
** Payment covered \$406,359 for FY 2001 production. Balance due for 2001 production is \$1,887,758.					
Semiconductor Manufacturing Grant Payments					
Company	Location	Approved Amount	Payment		
Infineon Technologies	Richmond	\$15,000,000	\$3,000,000		
Micron	Manassas	21,000,000	3,720,000		
Total		\$36,000,000	\$6,720,000		

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States
Government & Commodities 58.1-609.1					
1	1966	1976 [if taxpayer received motor fuel tax refund, then sales and use tax applies]; 1995 [expanded to include any fuel subject to the fuel tax].	Prevent double taxation. One of the original exemptions.	\$182.4mil [1]	D.C., KY, MD, NC, WVA=Exempt and imposes a motor fuel tax; Tennessee=sales and use tax exempt, imposes a local motor fuel tax.
2	1966		Prevent double taxation. One of the original exemptions.	\$506.6mil [1]	D.C.=exempt sales of motor vehicles and trailers subject to another tax; KY=exempt sales of motor vehicles and semi-trailers; NC, TN=exempts the sales of motor vehicles, subject to titling and registration; WVA, MD=leases and sales exempt, rentals are subject to tax.
3	1966		Consumer necessities. One of the original exemptions.	\$222.3mil [1]	D.C.=exempts residential gas and electricity; KY=exempts residential gas, electricity, and water, otherwise conditions apply; MD=exempts residential gas and electricity, water delivered through pipes and conduits is exempt; NC=exempts gas and electricity local sales tax, and water delivered by main lines and pipes; TN=exempts gas, electricity, and water for residential use only; WVA=exempts gas, electricity, and water through mains and pipes.
4	1966	1999 [excludes property bought by the Commonwealth & its political subdivisions that is transferred to private business for use in private facility]; 2002 [technical].	States may not constitutionally impose a tax on the U.S. government or its instrumentalities (McCulloch v. Maryland). Because the sales and use tax is imposed by the state and its localities, the exemption prevents them from having to tax themselves and each other. One of the original exemptions.	\$47.44mil [1]	D.C.=exempts U.S. government and political subdivisions in the District; KY, MD=exempts U.S. government and state and political subdivisions; NC=exempts U.S. government, certain governmental entities receive a refund of state sales and use tax, and effective July 1, 2004, all state agencies exempt from state and local sales tax on items other than electricity and telecommunications if purchased for the agency's own use; TN=exempts U.S. government, the state of Tennessee, counties, and municipalities; WVA=exempts the U.S. government, the state of West Virginia, and all political subdivisions.
5	1974		Prevent double taxation.	\$3mil [1]	D.C., KY, WVA=not exempt; MD=exempts the sale of an aircraft used principally to cross state lines; NC=a rate of 3% applies to the sales of each aircraft including accessories, the maximum tax is \$1500 per article; TN=exempt from sales or use tax is the sale of aircraft owned or leased by commercial interstate or international air carriers.
6	1977	1995 [expanded to include diesel & clean special fuels]; 2000 [technical].	Clarified the intent that the retail sales and use tax does not apply to fuels bought and used in boats or ships.	\$38,000 [1]	D.C.=imposes motor fuels tax; KY=exempts fuels consumed in the operation of ships and vessels which are used principally in the transportation of property or in the conveyance of persons for hire; MD=exempts sale of motor fuel that is subject to the motor fuel tax; NC=exempts sales of fuel for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce; TN=exempt; WVA=effective January 1, 2004, all sales of motor fuels that were subject to the flat rate tax component of the motor fuels excise tax are subject to the sales and use tax - it cannot be less than 5% of the average wholesale price of the motor fuel.
7	1979		Eliminate administrative burden and encourage sales of official flags by federal, state, and local governments.	Minimal [1]	D.C.=exempts all sales by the United States or the District; KY, NC=not exempt; MD=exempt; TN=non profit organizations exempt, if they make no money off of the sale; WVA=exempt as of 2003.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States	
8	Materials (reprints of Title 24.2, voter lists, statements of election results, and other official documents) furnished by the State Board of Elections.	1979		Eliminate administrative burden for State Board of Elections on its official documents.	Minimal [1]	D.C.=exempts all sales by the District; KY, NC, TN=not exempt; MD=exempts the sale of government documents by federal, state, or local government; WVA=exempts the sale of government documents.
9	Sales, leases and rentals of watercraft that are subject to the watercraft sales and use tax.	1981		Prevent double taxation.	\$7mil [1]	D.C.=all vessels exempt which are subject to the provisions of Article 29 of Police regulations; KY=imposes either a retail sales tax or watercraft sales tax-not exempt; MD=imposes sales tax; NC=a reduced watercraft rate of 3% applies to boats and the maximum tax is \$1500 per article; TN=imposes either retail sales tax or watercraft sales tax; WVA=subject to 6% sales tax.
10	Tangible personal property used in and about a marine terminal under the Virginia Port Authority's supervision for handling cargo, merchandise, freight and equipment.	1984	1990 [expanded to include operating subsidiary, VIT].	Essential government functions.	\$50,000-\$500,000 [1]	D.C., NC=not exempt; KY=exempts the water use fee paid or passed through by facilities using water from the Kentucky River basin to the Kentucky River Authority; MD=exempt; TN=exempts sales made to the state of TN or any county or municipality within the state; WVA=exempts government purchases.
11	Sales of artwork by prisoners in state correctional facilities.	1982		Eliminate administrative burden and encourage sales of artistic products by state prisoners.	Minimal [1]	All=not exempt.
12	Tangible personal property used or consumed by the Department of the Visually Handicapped or any nominee (nonprofit corporation under contract with the department) involved in the work and placement of the blind.	1984		Extend the government exemption for state agency purchased to "nominees" of the Department for the Visually Handicapped in order to increase employment opportunities for blind individuals.	Minimal [1]	D.C.=exempts sales to the District; KY=exempts sales to any cabinet, department, bureau, commission, board or other statutory or constitutional agency of Kentucky; MD=exempts purchases and sales of government entities; NC=a governmental entity is allowed an annual refund of sales and use taxes paid by it on direct purchases of tangible personal property and services other than electricity and telecommunications services, and sales by blind merchants operating under supervision of the Department of Health and Human Services; TN, WVA=exempts government purchases.
13	Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the VA Veterans Care Center Board of Trustees.	1998	2003 [technical].	Eliminate administrative burden on a facility providing adult and nursing home care for Virginia residents who are veterans of the U.S. armed forces.	Minimal [2]	D.C., KY, MD, NC, TN=no similar exemption; WVA=only exempts sales made by canteens or snack bars located on a state military reservation or state training facility under the jurisdiction of an adjutant general.
14	Tangible personal property used or consumed by any nonprofit organization whose members include Virginia and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government.	1999			Minimal [3]	All=N/A (nothing similar).
15	15. Tangible personal property purchased by any soil and conservation district.	2000			Unknown [4]	D.C., KY, NC, MD, WVA=N/A (nothing similar); TN=exempts sales to watershed districts for use and consumption by such districts.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States	
Agricultural 58.1-609.2						
1	Tangible personal property used in agricultural production for market, e.g. feed, seeds, plants, fertilizers, livestock, animals, milking systems, farm machinery, etc..	1966	1979 [added worm farming]; 1989 [added rabbits & quail]; 1994 [added bees].	Items used by farmers become component parts of products subject to the sales tax; prevents double taxation of such items. One of the original exemptions.	\$46.5mil [1]	D.C.=not exempt; KY=exempts similar to VA; MD, TN=exempts most; NC=exempts most, taxes farm machinery at 1%, not to exceed \$80 per item; WVA=general exemption for agriculture.
2	Agricultural commodities or seafood sold for use in the process of preparing, finishing or manufacturing such agricultural or seafood commodities for ultimate retail sale.	1966	1994 [added products from bees and beekeeping].	Provides tax equity between agricultural processors and other processors. One of the original exemptions.	\$0 (qualify under resale or manufacturing exemptions) [1]	D.C., KY=not exempt; MD=seafood harvesting purposes exempt; NC=exempts similar to VA; TN=exempt; WVA= 11-15-9 (40) exempts the process of value adding/manufacturing.
3	Agricultural products produced and consumed by farmers and their families.	1966		Simplify administration. Revenues generated would not always offset the costs associated with collecting the tax. One of the original exemptions.	\$700,000 [1]	D.C., WVA=not exempt; KY=all food is exempt (except restaurants and food immediately consumable); MD=exempts all sales of agricultural products by a farmer; NC=no sales tax on products sold as a farmer; TN=exempt.
4	Tangible personal property used by commercial watermen in extracting fish, bivalves or crustaceans from waters for commercial purposes.	1972	1985 [codified Department policy to exempt commercial fishing vessels, repair & replacement parts]; 1986 [expanded to equipment and materials used by commercial waterman].	Provide similar exemption to that available to farmers, manufacturers, other businesses involved in producing products for resale.	\$500,000-\$1mil [1]	D.C.=only fuel exempt; KY=not exempt; MD, NC=exemption similar to VA; TN=exempts sales of tangible personal property to commercial marine vessels, and repairs; WVA=exempts aquaculture.
5	Tangible personal property used directly in making feed for sale or resale.	1979		Provide similar exemption to that available to farmers, manufacturers and other businesses involved in production of items for resale.	\$0 (also covered by industrial manufacturing and processing exemption) [1]	D.C.=not exempt; KY=feed itself is exempt; MD=exempts as manufacturing; NC=exempts sales tax for products of a farm; TN=exempt; WVA=exempts sales of tangible personal property used in connection with the commercial production of an agricultural product.
6	Tangible personal property used directly in harvesting forest products.	1984	1999 [broadened definition of harvesting of forest products to include operations prior to transport of harvested products].	Provide similar exemption to that available to farmers, manufacturers, and other businesses that produce items for resale.	\$2.3mil [1]	D.C., WVA=not exempt; KY=exempt as manufacturing, and exempts industrial machinery; MD=exempts similar to VA; NC=effective January 1, 2006, mill machinery and mill machinery parts and accessories that are subject to tax under a different article are exempt; TN=equipment used exclusively for harvesting timber is exempt.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States
Commercial & Industrial 58.1-809.3					
1	Tangible personal property purchased by a contractor, stored temporarily in Virginia, and used solely in another state or foreign country where it could be purchased free from sales tax.	1973			
			Levels playing field between Virginia construction materials suppliers and construction material suppliers in states where the construction site is located and the sales tax is not imposed on such materials.	\$73,000 [5]	D.C.=exempt; KY, WVA=not exempt; MD=contractors pay tax, then apply for refund; NC=exempts property purchased outside NC, stored temporarily in NC, and later used outside the state; TN=all tangible personal property in storage is exempt.
2	Industrial materials, machinery and tools, and their repair parts, fuel, power, energy and supplies used directly in manufacturing, processing or mining (i.e. manufacturing) products for sale.	1966	1994 [technical].		
			Recognizes industry's importance and encourages the development and growth of production facilities in the Commonwealth. One of the original exemptions.	\$294.4mil [5]	D.C.=taxes machinery, tools, supplies and packaging used in manufacturing as well as equipment and printing used to produce publications; KY=similar to VA except only for machinery for new and expanded industry; MD=as expansive as VA; NC=allows a refund; TN=similar to Virginia, but taxes fuel, power, and energy at a reduced rate; WVA=a refundable exemption for sales and services, machinery, supplies and materials directly used or consumed in the activities of manufacturing production of natural resources.
3	Tangible personal property purchased or leased by a public service corporation or common carrier of property and passengers by railway when used in providing public services.	1966	1978 [added railroads]; 2004 [eliminated telecommunications].		
			Public service provided to citizens of the Commonwealth. One of the original exemptions.	\$143.4mil [5]	D.C.=exempts telecommunication utility or public service company, exempts the sales of repair and replacement parts to a common carrier (railways), and exempts sales of personal property to a public service company; KY=exempts sales of tangible personal property to a common carrier; also exempts locomotives including materials for their construction, repair or modification, or fuel or supplies for the direct operation, used or to be used in interstate commerce; MD=exempts motor vehicle carriers in interstate commerce; NC=an interstate carrier is allowed a refund of part of sales and use taxes paid on lubricants, repair parts and accessories, and fuel; TN=no tax is imposed with respect to sales of tangible personal property to common carriers for use outside TN, and no tax on non-profit telecommunications co-ops; WVA=exempts sales of or charges for the transportation of passengers in interstate commerce and the refund of sales tax paid on sales of services, machinery, supplies and materials directly used in the activities of manufacturing transportation, and provision of a public utility service.
4	Ships and vessels as well as repairs and alterations to them and fuel and supplies, provided the ships and vessels are used exclusively or principally in interstate or foreign commerce.	1966	1996 [expanded to include dredges and their supporting equipment].		
			Promote interstate and foreign commerce and support Virginia's shipbuilding and port industries. One of the original exemptions.	\$8.2mil [5]	D.C.=sales of vessels subject to provisions of Article 29 and the use or storage within the District of tangible personal property owned and held by a common carrier for use principally without the District in the course of interstate Commerce, in or upon, or as part of any boat; KY=exempt similar to VA; MD=exempt; NC=sales of fuel and supplies exempt in interstate or foreign commerce; TN=exempts most and taxes fuel; WVA=exempts transportation of people in interstate commerce, refunds taxes paid for sales of services, machinery, and supplies directly used or consumed in the activities of transportation, and exempts common carrier shipping charges.
5	Tangible personal property used exclusively and directly in basic research or research and development in the experimental or laboratory sense.	1966	1980 [added basic research].		
			Encourage research and development of new products and processes and improvements of existing products and processes.	\$11.8mil [5]	D.C., KY, NC=not exempt; MD, WVA=exempt similar to Virginia; TN=exempts certain manufacturers.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States	
6	Tangible personal property sold to an airline operating intrastate, interstate, or foreign commerce as a common carrier providing regularly scheduled flights to Virginia airports.	1966	1972 [expanded to foreign airlines]; 1980 [expanded to intrastate airlines]; 1995 [requires airline service to VA airports at least one a week].	Encourage flight service to and from Virginia airports. One of the original exemptions.	\$36.6mil [5]	D.C.=exempts sales of food or drink, beverages of any nature if made in any aircraft within the District in the course of commerce between the District and a state; KY=aircraft, repair and replacement parts, supplies (except for fuel), for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire is exempt-nominal intrastate use is not enough to qualify for the exemption; MD=exempts sales of replacement parts or other tangible personal property to be used physically in on or by an aircraft; NC=sales of aircraft lubricants, aircraft repair parts and aircraft accessories, exempt receive a refund; TN=exempts aircraft parts and supplies for use exclusively in servicing or maintaining carriers' aircraft in interstate or international commerce, does not apply to fuel-applies only to tangible personal property primarily used in such businesses at the airport; WVA=exempts sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property.
7	Meals furnished by restaurants or food service operators to employees as part of wages.	1978		Eliminate administrative burden.	\$6.3mil [5]	All=not exempt.
8	Tangible personal property purchased and used directly in preparing and maintaining textile products by an industrial processor engaged in the commercial leasing of laundered textile products.	1980		Provide exemption similar to that of industrial manufacturers and processor of items for sale.	\$1.6mil [5]	D.C., KY, WVA=not exempt; MD=exempts tangible personal property used directly and predominantly in a production activity (which includes laundering, maintaining or preparing textile products for rental) at any stage of operation on the production activity site from the handling of raw material or components to the movement of the finished product; NC=a 1% sales tax rate applies to sales of fuel, other than electricity, to commercial laundries or to pressing and dry cleaning establishments for use in machinery that is used directly in performing the laundering or the pressing and cleaning service-also sales to commercial laundries or to pressing and dry cleaning establishments of articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service; TN=dry cleaners can get a 50% credit for the sales and use tax paid on replacement equipment to meet emission control standards.
9	Certified pollution control equipment and facilities as defined in 58.1-3660.	1984	1995 [technical]; 1996 [extended sunset to 2001]; 2001 [extended sunset to 2006]; 2003 [added certification by state authority requirement].	Broadens manufacturing exemption so it applies to pollution control structures and pollution control activities owned other than by manufacturers.	\$4.9mil [5]	D.C., NC=not exempt; KY=just the facility is exempt; MD=exempts items required to conform to an air or water pollution law and normally considered part of real property; TN=chemicals and supplies used in pollution control facilities are exempt, and there is a 100% tax credit on anything used to bring pollution under control-also certain pollution control facilities are exempt; WVA=exempts the service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the WVA department of environmental protection or the WVA bureau for public health, or both.
10	Repair parts, tires, meters and dispatch radios sold or leased to taxicab operators for use on taxicabs.	1984	1987 [expanded to meters and dispatch radios].	Prevent decrease in taxicab operators offering service in Virginia.	\$498,000 [5]	D.C.=two-way radios for taxicab dispatch are exempt from tax; KY, MD, NC, TN, WVA=not exempt.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States	
11	High speed and other electrostatic duplicators used by persons primarily in the business of printing or photocopying products for sale.	1986	Provide same exemption as for traditional printers (manufacturing) because photocopy businesses traditionally deemed nonindustrial and ineligible for the manufacturing exemption in 58.1-609.3 (2).	\$248,000 [5]	D.C., KY, NC, WVA=not exempt; MD=exempt; TN=exempts machinery used in the printing business and prepress and press operations.	
12	Raw materials, fuel, power, energy, supplies and machinery used directly in the drilling, extraction, refining, or processing of natural gas and oil.	1994	1996 [extended sunset to 2001]; 2001 [extended sunset to 2006].	Encourage the development and growth of the natural gas and oil production industry.	\$0 (also covered by the industrial manufacturing and mining exemption) [5]	D.C., MD=not exempt; KY=refining and extraction of natural gas and petroleum, supplies and industrial tools are exempt; NC=piped natural gas is exempt; TN=limited exemption for machinery; WVA=refundable exemption similar to VA.
13	Sale, lease, use, storage, consumption, or distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind possessing space flight capability and their components.	1997	2001 [extended sunset to 2005].	Encourage spaceport activities by the Virginia Commercial Space Flight Authority.	\$320,000-\$360,000 [6]	All=not exempt.
Service-related 58.1-609.5						
1	(i) Professional and personal services that involve sales of goods as inconsequential elements; (ii) repair services for which a separate charge is made; and (iii) Internet access.	1966	1998 [added internet]; 2004 [expanded internet].	Administrative burden/distinguishing between personal property and service. One of the original exemptions.	\$808mil [7]	D.C., NC, WVA=exempts (i) and (iii); KY=exempts all three (exempts all services unless specifically designated as taxable); MD=(i), (ii) and (iii) exempt; TN=none exempt.
2	Remodeling services for property sold when there is a separate charge.	1966	1989 [technical].	Administrative burden/distinguishing between personal property and service. One of the original exemptions.	\$57.1mil (but duplicative of revenue impact for repair services above) [7]	D.C.=taxable; KY=exempts all services, unless specifically designated as taxable; MD=repairing an existing item is exempt; NC=exempt; TN=not exempt; WVA=not exempt, unless in fulfillment of a contract for construction.
3	Transportation charges separately stated.	1966	1989 [technical].	Viewed as subsequent to and independent of the sale. One of the original exemptions.	\$0.5mil [7]	D.C.=exempt; KY, MD=exempts any charges separately stated; NC, WVA=taxable; TN=if title passes to the buyer at the point of origin, freight and transportation charges are not subject to tax.
4	Clothing alteration services separately charged.	1979	1989 [technical].	Equity between alterations by clothing business and non-clothing business.	\$0.1mil [7]	D.C., MD, TN, WVA=not exempt; KY=exempts all services, unless specifically designated as taxable; NC=exempt.
5	Gift wrapping services by a nonprofit organization.	1980	1989 [technical].	Administrative burden.	Minimal [7]	D.C., KY, MD, TN, WVA=not exempt; NC=all sales by nonprofits exempt with certain conditions.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States	
6	Modification of prewritten computer programs separately charged.	1986	1989 [technical].	Response to technology; true object is service.	\$53.7mil (includes both exemptions)	D.C., TN=taxable; KY, MD, NC=exempt; WVA=sales of data processing services are exempt.
7	Custom computer programs.	1986	1989 [technical].	Response to technology; true object is service.	[7]	D.C.=taxable; KY, MD, NC=exempt; TN=taxable effective July 1, 2005, computer software fabricated by a person for such person's own use and consumption will be exempt; WVA=custom programs directly used in communication is exempt (11-15-9h), and sales of electronic data processing services are exempt.
8	Rental of lodging for more than 90 continuous days.	1966	1989 [technical].	Equity w/permanent housing (real estate). One of the original exemptions.	Minimal [7]	D.C., NC, TN=exempts 90 days or more; KY, WVA=exempts 30 days or more; MD=not exempt.
9	One-half the cost of maintenance contracts that provide service and goods.	1994		Administrative burden. Do not know in advance what portion will be parts & what will be service.	Unknown [8]	D.C.=taxes with regard to the parts and materials, but not to the service-similar to VA; KY=exempt when billed separately from materials; MD=labor and service exempt when billed separately from materials; NC=exempts labor and installation services when billed separately from materials; TN=charges for warranty or service contracts warranting the property's repair or maintenance are taxed, but not any repairs to the extent covered by contract; WVA=sales tax not applicable to contracting services.
Media-related 58.1-609.6						
1	Leasing, renting or licensing of copyright audio or video tapes, and films for public exhibition at motion picture theaters or by licensed radio and television stations.	1976		Reaction to Dept. of Tax changing an administrative ruling from exempt to non-exempt.	\$1.7mil [7]	D.C.=gross proceeds from the rental of a film, records or any type of sound transcribing to theaters and radio and television broadcasting stations is not considered a retail sale, and therefore exempt; KY=exempts moneys paid for the lease or rental of films by commercial motion picture theaters when the lease or rental is for the sole purpose of use in the normal course of business; MD=exempts the rental of a motion picture, motion picture trailer, or advertising poster for display on theater premises by a person whose gross receipts from the activity related to the rental is subject to the admissions and amusement tax; NC=exempts the lease or rental of motion picture films used for exhibition purposes by an established business, and exempts the lease or rental of films, motion picture films, transcriptions and recordings to radio stations and T.V. stations operating under a certificate from the FCC; TN=exempt; WVA=exempts sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge of admission to the exhibition of the film is subject to the tax imposed by this article.
2	Broadcasting equipment used by radio and television companies and open video systems used by common carriers or video programmers.	1966	1980 [expanded to cable television]; 1995 [broadened to include common carriers or video programmers using a video dial tone platform]; 1997 [broadened exemption to include cable television systems & open video systems].	Level playing field w/print media. One of the original exemptions.	\$2.4mil [7]	D.C.=exempts sales of personal property purchased by a digital audio radio satellite service company operating under a digital audio radio satellite license granted by the FCC, and exempts sales of residential cable television service and commodities by a cable television company; KY, WVA=not exempt; MD=exempts the sale of film or video tape for uses only in television broadcasting by a television station that the FCC licenses specifically to broadcast to a city or town outside the state; NC=applies a special rate of 1% with a maximum tax of \$80/article to sales of broadcasting equipment, parts and accessories and towers to federally regulated commercial radio and television companies; TN=exempt.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States	
3	Any publication issued daily, or regularly at average intervals not exceeding three months, but not including newsstand sales of such.	1966	1983 [expanded to advertising supplements]; 1995 [excluded newsstand sales or back publications from exemption].	Administrative burden. One of the original exemptions.	\$8-\$12mil [7]	D.C.=taxes the sale of or charge for any newspaper or publication; KY=periodicals printed on newsprint at least twice monthly are exempt; MD=exempts newspapers printed and distributed by the publisher at no charge, must be printed at least once a month; NC=exempts newspapers by newspaper street vendors, newspaper carriers, vending machines, and magazines delivered door-to-door; TN=exempts periodicals printed entirely on newsprint or bond paper and regularly distributed on a biweekly or more frequent basis; WVA=exempts newspapers when delivered to consumers by route carriers.
4	Printed materials (except administrative supplies, envelopes, containers and labels used for packaging and mailing same) when stored for 12 mos. or less in VA and distributed for use outside VA.	1976	1977 [added criteria re: (i) 12 mos. or less, (ii) distribution outside VA, and (iii) advertising for sale of personal property]; 1979 [expanded to include paper furnished to printers]; 1985 [(i) included other printed materials, (ii) removed criterion regarding advertising sale of personal property, and (iii) added sunset date of June 30, 1998]; 1994 [provided that out-of-state advertising businesses are not the final user of printing materials purchased from a VA printer]; 1995 [provided that no advertising business, in-state or out-of-state, shall be the final user of printing materials under certain conditions]; 1997 [extended sunset to 2002 for the amendment enacted in 1995 (see above)]; 2003 [extended sunset to 2004]; 2004 [extended sunset to 2008].	Encourage direct marketers, particularly those located outside VA, to use VA printers.	\$2.5mil [7]	D.C.=all tangible personal property stored in the District for no more than 90 days is exempt, if stored for the purpose of subsequently transporting the property outside the District for use solely outside the District; KY, MD, TN=exempt; NC=printed materials not exempt, but exempts packaging supplies; WVA=not exempt.
5	Advertising - Planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting, and other media.	1985		Counteract a court decision imposing tax on the total charge for preparation of advertising.	\$8.1mil [7]	D.C.=not exempt; KY=exempts advertising supplements in newspapers; MD=exempts the sale of direct mail advertising literature that will be distributed outside the state; NC=exempts advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper; TN=exempts advertising supplements or other printed matter distributed in newspapers, exempts direct mail advertising material distributed in TN from outside the state, includes discount coupons or leaflets for more than one business delivered by mail in a single package to customers; WVA=exempts sales of radio and television broadcasting time and preprinted advertising circulars, newspaper, and outdoor advertising space for the advertisement of goods and services.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States	
6	Audiovisual works - The lease, rental, license, sale, or use of any audio or video tape, film, or other audiovisual work, when acquired for the purpose of licensing, distributing, broadcasting, or reproducing the work or incorporation into another work. The production of any such work or any portion thereof, and equipment used in such production.	1995	1997 [extended sunset to 2002]; 2002 [extended sunset to 2004]; 2004 [extended sunset to 2009].	To encourage the production of films in VA and to encourage national programmers and producers to establish operations in VA.	\$300,000 [9]	D.C., WVA=not exempt; KY=motion picture production companies filming or producing a film in state are allowed a refundable credit equal to the amount of Kentucky sales and use taxes paid on purchases made in connection with the filming or producing of motion pictures within KY; MD=exempts tangible personal property or a taxable service used in a film production activity by a film producer or production company (very extensive list of tangible personal property); NC=exempts sales of a/v masters made or used by a production company in making visual and audio images for first generation reproduction; TN=exempts motion picture production companies located outside the state if it shows that it has paid at least \$500,000 for goods and services in TN in filming, production in TN during a period of 12 months or less, and exemption is by way of a refund.
7	Educational materials when distributed by a book-publishing business free of charge to educators.	1998	2002 [extended sunset to 2004]; 2004 [extended sunset to 2008].	Very narrow suspension of the withdrawal from inventory doctrine.	\$110,000 [10]	All=no exemption.
Miscellaneous 58.1-609.10						
1	Heating fuels used for non-business purposes.	1980		Consumer necessities.	\$14.9mil [11]	D.C., KY, MD, TN=exempt; NC=not exempt; WVA=exempts gas when delivered through mains and pipes and electricity, but taxes all other heating fuels.
2	Occasional sales (e.g. yard sales).	1966		Administrative burden. One of the original exemptions.	Unknown [11]	All border states have similar exemptions for occasional sales.
3	Leasebacks - Purchases of property that will be leased.	1966		Similar to resale to ultimate consumer. One of the original exemptions.	\$3.2mil [11]	D.C., MD, NC, TN, WVA=exempt; KY=exempt with resale exemption certificate.
4	Interstate Commerce/Export Factor - Property delivered outside VA for use outside VA.	1966	1981 [expanded to include intermediary in-state deliveries]	Compliance with Commerce clause; flow of commerce thru VA's ports. One of the original exemptions.	Unknown [11]	D.C.=exempts property delivered outside the District for use solely outside the district; KY=exempts property delivered outside the state for use solely in another state; MD=exempts a sale of tangible personal property intended solely for use in another state; NC=exempts tangible personal property purchased solely for export outside NC; TN=exempts imports and items produced and manufactured in TN for export; WVA=exempts tangible personal property purchased solely for the purpose of export.
5	Purchase made with Federal Food Stamp or WIC vouchers program.	1986		Required by Federal law.	\$22mil [11]	All=exempt as required by federal law.
6	Property used in the repair of nuclear power plants outside VA.	2000		Encourage out-of-state nuclear power plants to purchase repair parts from VA businesses.	Unknown [12]	All=not exempt.
7	Professional's provision of original, revised, edited, or copied documents to clients.	1997		True object is service.	Unknown [13]	All=not exempt.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States	
8	School lunches subsidized by government, and school textbooks.	1966	1980 [expanded to include required textbooks sold by private dealer]; 2003 [technical].	Consumer necessities. One of the original exemptions.	\$9-\$10mil [5]	D.C.=exempts all sales by the US and the District; KY, NC, TN, WVA=exempt; MD=school lunches exempt, and sales to the school are exempt (including textbooks).
9	Prescription drugs.	1966	1972 [expanded to include drugs purchased by physician for use in his practice]; 1978 [expanded to include syringes, wheelchairs, & prescriptions by audiologists]; 1979 [expanded to include work orders from hearing aid dealers]; 1987 [expanded to include prescriptions by veterinarians]; 1995 [expanded to include prescriptions by nurse practitioners and nurse physicians]; 2003 [technical].	Consumer necessities. One of the original exemptions.	\$61mil [14]	D.C.=exempts all medicines, pharmaceuticals, and drugs whether or not made on prescriptions of duly licensed physicians and surgeons and general and special practitioners of the healing art; KY=exempts a drug purchased for the treatment of a human being for which a prescription is required by state or federal law (whether the drug is dispensed by a licensed pharmacist, administered by a physician or other health care provider, or free samples), insulin and diabetic supplies, colostomy, urostomy, and ileostomy supplies; MD=exempts sales of medicine; NC=exempts prescription medicines and nutritional supplements sold by a chiropractor at his/her office; TN=exempts ostomy products, oxygen, pharmaceutical samples, prescriptions drugs; WVA=exempts sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes.
10	Durable medical equipment (e.g. wheelchairs, prosthetic devices).	1978	1980 [expanded to include insulin & insulin syringes]; 1982[expanded to include diabetic testing devices]; 1984 [expanded to include all durable equipment & defined 'durable equipment']; 2003 [technical].	Consumer necessities.	\$4.2mil [14]	D.C.=exempts sales of orthopedic devices, artificial human eyes, artificial limbs and their replacement parts, artificial hearing devices, mammary prostheses, false teeth, eyeglasses when specially designed or prescribed by an ophthalmologist, wheelchairs, crutches, canes, walkers, hospital beds, bedside commodes, patient lifts, urinals, respirators, etc.; KY=exempts prosthetic devices, crutches, walkers, wheelchairs, wheelchair lifting devices, and wheelchair repair and replacement parts; MD=exempts certain equipment including crutches, wheelchair, oxygen tent, and other equipment pursuant to explicit conditions; NC=exempts durable medical equipment and supplies sold on prescription, and prosthetic devices; TN=exempts any item necessary for the use or wearing of an artificial limb, wheelchairs, the sale or repair of prosthetics, orthotics, special molded orthopedic shoes, walkers, crutches, surgical supports, and effective July 1, 2005, the sales tax component parts of prescription eyewear (including replacement parts and industrial materials) also is exempt. WVA=exempts sales of durable medical goods, mobility enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes.
11	Dialysis supplies and drugs.	1984	2003 [technical].	Consumer necessities.	\$0.8mil [14]	D.C.=exempts all medicines, pharmaceuticals, and drugs whether or not made on prescriptions of duly licensed physicians and surgeons and general and special practitioners of the healing art-explicitly exempts all hemodialysis devices; KY=exempts drugs which require a prescription, but does not exempt dialysis supplies; MD=exempts drugs and devices, but taxes supplies; NC=exempts any medicines, equipment, and supplies sold on prescription; TN=not exempt; WVA=generally not exempt, but does exempt all drugs dispensed with a prescription.
12	Motor vehicle equipment for the disabled.	1978	2003 [technical].	Consumer necessities.	\$6,000 [14]	NC=exempt; All others=not exempt.
13	Typewriters/computers for the disabled in order to communicate (must be prescribed by physician).	1985	2003 [technical].	Consumer necessities.	Unknown [14]	TN=exempts computer software designed for the use in the treatment of individuals w/ a learning disability that is prescribed; All others=not exempt.

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States
14 Nonprescription drugs purchased for the treatment or prevention of disease.	1990	1992 [postponed effective date to July 1, 1994]; 1994 [postponed effective date to July 1, 1996]; 1996 [postponed effective date to July 1, 1998]; 2003 [technical].	Consumer necessities.	\$20mil [15]	D.C.=exempts all medicines, pharmaceuticals, and drugs whether or not made on prescriptions of duly licensed physicians and surgeons and general and special practitioners of the healing art; KY, NC, TN, WVA=not exempt; MD=exempt.
15 Property withdrawn from inventory and donated to a nonprofit entity or to state or local government.	1986	2003 [technical].	Encourage charitable donations from inventory.	\$11,000 [14]	D.C., KY, MD, WVA=not exempt; NC=exempts similar to VA; TN=exempts sales or use tax upon all tangible personal property or taxable services given or donated to any religious, educational and charitable institution.
Exemptions for Nonprofit Entities § 58.1-609.11	1986 [nonprofit schools and hospitals]	Amended numerous times to add new exemption or extend sunset dates.	Many provide necessary & important services. One of the original exemptions.		
1 Grandfathers entities that were already exempt (with the duty to reapply on a rolling basis).	2003	2004 [technical].	Many provide necessary & important services that are rewarded or encouraged by the exemption.	Civic and cultural entities = \$8.9mil [11]; Healthcare entities=\$50mil [14]; Educational entities=\$39mil. [5]; Total=\$87.9mil.	D.C.=exempts sales to an exempt IRC §501(c)(4) organization; KY=exempts sales to resident nonprofit educational, charitable, and religious institutions, which have qualified for income tax exemption under IRC § 501(c)(3), if the purchases are used solely within their functions; MD=exempts sales to a nonprofit under certain conditions (§11-104); and exempts sales by a nonprofit organization if it is a bona fide church, gift shop at a mental hospital, a hospital thrift shop, a vending facility operated under the Maryland Vending Program for the Blind or an elementary or secondary school in the State; NC=exempts sales by non-profit civic, charitable, educational, scientific, literary or fraternal organization when all of the conditions are met, and (§ 105-164.13) allows a semi-annual refund of sales and use taxes paid on direct purchases of tangible personal property by the nonprofit entity. TN=exempts sales to certain religious, educational and charitable institutions (§7-6-322); WVA=exempts sales of property to churches that make no charge whatsoever for the services they render, also sales to a corporation or organization which has a current registration certificate and which is exempt from federal income taxes under IRC §501(c)(3) or IRC (c)(4), (11-15-9).
2 New exemptions will be granted administratively by the Tax Department to any nonprofit entity that meets certain criteria (e.g. exempt from federal taxation under § 501 (c) (3); annual administrative costs do not exceed 40% of gross revenue).	2003	2004 [technical].	Many provide necessary & important services that are rewarded or encouraged by the exemption.	7.7mil [16]	
Partial Exemption on food purchased for human consumption § 58.1-611.1			Consumer necessities.		
Reduced rates (total state and local tax).			Consumer necessities.		MD, NC, KY=exempt; TN, WVA=not exempt
Current Rate 4%	1999	2002 [modified definition of food]; 2003 [technical].	Consumer necessities.	\$52.6mil [17]	

Source: Division of Legislative Services

Sales Tax Exemptions

	Year Enacted	Year Amended	Rationale	Fiscal Impact	Surrounding States
Rate effective July 1, 2005 3.5%	2004		Consumer necessities.	\$54mil (additional) [18]	↓
Rate effective July 1, 2006 3.0%	2004		Consumer necessities.	\$54mil (additional) [18]	
Rate effective July 1, 2007 2.5%	2004		Consumer necessities.	\$54mil (additional) [18]	

- 1-Virginia Sales and Use Tax Expenditure Study, December 1994, Dept. of Taxation.
- 2-1998 Fiscal Impact Statement for HB 131, Dept. of Taxation.
- 3-1999 Fiscal Impact Statement for HB 1571 and SB 829, Dept. of Taxation.
- 4-2000 Fiscal Impact Statement for SB 106 and SB 48, Dept. of Taxation.
- 5-Virginia Sales and Use Tax Expenditure Study, December 1995, Dept. of Taxation.
- 6-1997 Fiscal Impact Statement for HB 1948, Dept. of Taxation.
- 7-Virginia Sales and Use Tax Expenditure Study, December 1991, Dept. of Taxation.
- 8-1994 Fiscal Impact Statement for SB 28, Dept. of Taxation.
- 9-1995 Fiscal Impact Statement for HB 1512, Dept. of Taxation.
- 10-1998 Fiscal Impact Statement for HB 131, Dept. of Taxation.
- 11-Virginia Sales and Use Tax Expenditure Study, December 1993, Dept. of Taxation.
- 12-2000 Fiscal Impact Statement for HB 99, Dept. of Taxation.
- 13-1997 Fiscal Impact Statement for HB 1725, Dept. of Taxation.
- 14-Virginia Sales and Use Tax Expenditure Study, December 1992, Dept. of Taxation.
- 15-1996 Fiscal Impact Statement for SB 416.
- 16-2003 Fiscal Impact Statement for HB 2525.
- 17-1999 Fiscal Impact Statement for HB 1601.
- 18-2004 Special Session I Fiscal Impact Statement for HB 5018.

Direct Marketing Industry Employment in Virginia

The direct marketing industry is an important sector of Virginia's economy. In fact, according to the most recent figures (in 2003), direct marketing represented 452,000 jobs in the Commonwealth. Additionally, Virginia enjoyed a rapid rate of growth in direct marketing employment of 6.1% per year over the period 1997-2002, which compares favorably to the national growth rate of direct marketing employment of 5.1% for the same period.

The size and rate of growth of direct marketing in Virginia did not occur by accident. As you all know, Virginia has a long history of pro-growth state policies: a reasonable, and not burdensome, regulatory environment; being a "Right to Work" state; having a relatively low tax rate; along with a rather straightforward system of tax collection.

As noted by the numbers below, when compared nationally, as well as to neighboring Maryland, Virginia represents a genuine success story for the direct marketing industry.

Direct Marketing Employment*

	2003	2007	Compound Annual Growth 97-02 02-07	
Virginia	452,000	527,000	6.1%	3.7%
Maryland	306,000	357,000	5.9%	3.7%
Nationally	16,504,000	19,100,000	5.1%	3.5%

To add additional perspective to these numbers, in 2003 Virginia had direct marketing employment of 452,000. This compares to the Commonwealth's population (according to the 2000 census) of 7,078,000. By comparison, Maryland, a smaller state, had in 2003 direct marketing employment of 306,000 with a population in 2000 of 5,296,000. Thus, on a relative basis, adjusted for each state's population, for every 100 direct marketing jobs in Maryland, Virginia had 111 or 11% more. Additionally, by this same measurement, for every 100 direct marketing jobs nationally, Virginia had 109.

*The Source of these figures is Global Insight (formerly Wharton Econometrics Forecasting.)

DEPARTMENT OF TAXATION

SELECTED RETAIL SALES AND USE TAX DATA

Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the
Economy of the Commonwealth

HJR 176

October 4, 2004

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Classification of Taxes

Sales Tax	What an in-state dealer collects from a customer and remits
Use Tax	What an out-of-state vendor collects on sales to Virginia customers and remits
Use Tax	What an in-state dealer remits on taxable purchases on which no tax was charged or on personal use items
Use Tax	Generally the tax assessed pursuant to an audit of a business
Consumer Use Tax	What a "non-dealer" remits on taxable purchases on which no tax was charged

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Taxation of Online Sales

Competing With the
Streamlined Sales Tax Project

By:

Thomas M. Lenard

The Progress & Freedom Foundation



Purpose of Study

- Analyze economic effects of SSTP, assuming participation is voluntary.
- "Tax-free zone:"
 - Zero-sales-tax states.
 - Small businesses (<\$5 million in sales).
 - Other states that do not adopt SSUTA.
- Analyze choice facing individual states.
 - Case studies of Virginia, Colorado.

General Conclusions

- Small portion of \$1.15 trillion in remote sales affected by implementation of SSUTA.
- Assuming participation voluntary, large sales shifts to tax-free zone, because consumers sensitive to tax differentials.
- Benefits of opting out – in terms of economic activity, job growth, incomes and tax revenue – potentially substantial.

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Shares of Remote Purchases Potentially Affected by SSUTA (\$million)

Sector	Total Remote Purchases	Potentially Affected Purchases
Business-to-Business (B2B)	995,400	36,041
<i>Manufacturing</i>	<i>725,149</i>	<i>0</i>
<i>Wholesale</i>	<i>270,251</i>	<i>36,041</i>
Business-to-Consumer (B2C)	71,643	21,432
Offline Remote Purchases	83,558	65,108
Total Purchases	1,150,601	122,581

Percent of All Remote Purchases Potentially Affected by SSUTA
10.7%

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SSUTA With Universal Participation

- Interstate purchases become more expensive relative to in-state purchases.
- Consumers shift some purchases to offline and online sources in home state.
- Extent of shift depends on how consumers value other attributes – convenience, shipping costs etc.

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SSUTA With Voluntary Participation

- Things changed dramatically by existence of tax-free zone:
 - Five zero-sales-tax states.
 - Small businesses.
 - Other states that may opt out.
- Rather than purchases shifting in-state, they shift to tax-free zone.

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Internet Shoppers Sensitive to Taxes

- Studies by University of Chicago economist Austan Goolsbee; Jupiter Research.
- Experienced Internet users especially tax sensitive.
- Also, spillover effects.
- Our study uses estimate of 24.3% shift in remote sales (from Goolsbee).

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SSUTA If All Sales-Tax States Participate

- \$29 billion shift in remote purchases to tax-free states.
- Virginia – \$520 million in remote purchases to tax-free states.
- \$4.8 billion revenue gain to SSUTA members.
- \$97 million revenue gain for Virginia.
- High-tax states, net importers have more to gain.

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Multiplier Effects

- Multiplier – each additional dollar of final demand has multiplicative effect on output, earnings and employment.
- Estimates (previous slide) incorporate direct effect of sales shifts, but not multiplier effects – so, for example, actual revenue gain lower than \$4.8 billion.
- Multipliers from Regional Impact Modeling System (RIMS II) from Bureau of Economic Analysis, Department of Commerce.

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Aggregate Economic Impact of SSUTA-Shifted Purchases (\$ million, except jobs)

	B2B	B2C	Offline	Total
Direct Shift to non-SSUTA States				
Output	8,530	5,073	15,410	29,013
Earnings	2,492	1,717	5,216	9,425
# of Jobs	30,275	44,389	134,848	209,512
Multiplier Effect from Initial Shift				
Output	14,631	9,082	27,620	51,342
Earnings	4,186	2,791	8,477	15,454
# of Jobs	63,115	65,445	198,844	327,413
Aggregate Economic Impact				
Output	23,161	14,164	43,030	80,355
Earnings	6,667	4,508	13,694	24,879
# of Jobs	93,390	109,843	333,692	536,925

Source: BEA RIMS II multipliers (average for zero-sales-tax states), author's calculations

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Decision to Participate

- Potential sales-tax revenue from residents' remote purchases.
- Economic activity "in play" – i.e., subject to moving to non-participating states.
- Assessment of ability of state to attract some of this activity.
- Effects of shifts on economic activity, employment, incomes and taxes.

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Benefits and Costs of Virginia Opting out of SSUTA (\$ million, except jobs)

	Economic Impact:			Increased Receipts from:		
	Output	Personal Income	# of Jobs	Sales/Excise Taxes	Personal Income Taxes	Sales + Income Taxes
Benefit: Avoid Adverse Impact of Losing Remote Sales by Virginia Businesses	2,369	1,931	14,888	40	63	102
Benefit: Depends on % of Total Shifted Purchases Captured by Virginia						
1%	857	698	5,383	14	23	37
2%	1,713	1,396	10,766	29	45	74
3%	2,570	2,094	16,150	43	68	111
Cost: Foregone Sales Tax Remissions from SSUTA States				-97	0	-97

Net Benefit from Opting Out: **Positive even if Virginia businesses do not capture any shifted purchases**

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Conclusions

- Large amount of business shifted from SSUTA states to tax-free zone over long run.
- State needs only to capture very small portion of this business to be ahead of the game.
- State may be ahead if it simply avoids losing business to tax-free zone.
- States have a strong incentive to opt out.

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Voluntary or Mandatory

- Benefits of SSUTA to members decline as more states opt out. Member states have an interest in avoiding defections.
- Proposal to require all sellers to collect taxes for SSUTA members – Istook bill.
- Multiple tax collections – burdensome.
- Tantamount to requirement to adopt SSUTA. Non-participants
 - bear costs of membership
 - deprived of benefits of opting out.
- Might induce zero-tax states to adopt sales tax.
- Erodes benefits of tax competition.

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Classification of Sales Tax Payment Data Captured by TAX

- More than one type of tax remitted on the same return
 - ST-9 Virginia Retail Sales and Use Tax Return
 - State sales tax collected from customers
 - Local sales tax collected from customers
 - State food tax
 - State use tax remitted on taxable purchases on which no tax was charged or on personal use items
 - Local use tax remitted on taxable purchases on which no tax was charged or on personal use items
 - ST-8 Virginia Out-of-State Dealer's Use Tax Return
 - State use tax collected from Virginia customers
 - Local use tax collected from Virginia customers
 - State food tax
 - State use tax remitted on taxable purchases on which no tax was charged or on personal use items
 - Local use tax remitted on taxable purchases on which no tax was charged or on personal use items
 - ST-7 Virginia Business Consumer's Use Tax Return
 - State use tax remitted on taxable purchases on which no tax was charged
 - Local use tax remitted on taxable purchases on which no tax was charged
 - State food tax

Amount of Return Payments

Fiscal Year	State Sales Tax	Local Sales Tax	State Use Tax	Local Use Tax	State Food Tax	State Consumer's Use Tax	Local Consumer's Use Tax	Total
1998	1,891,396,516	578,443,718	206,222,056	60,158,370	n/a	16,680,648	7,130,163	2,862,031,469
1999	2,124,642,841	616,634,222	241,284,308	70,210,268	n/a	22,939,077	7,374,217	3,083,084,931
2000	2,139,789,242	654,956,133	274,094,025	79,971,144	102,502,687	25,782,704	7,672,025	3,284,749,960
2001	2,054,904,855	685,280,433	307,317,644	89,793,788	288,167,946	30,894,449	8,918,025	3,443,257,140
2002	2,034,474,327	691,324,035	269,488,930	78,930,560	300,263,389	31,066,074	9,061,042	3,414,806,357
2003	2,087,853,081	712,841,138	271,868,569	79,488,525	315,911,051	33,156,301	9,485,154	3,510,603,819
2004	2,292,050,195	777,786,663	314,754,175	92,190,219	333,860,050	31,082,649	8,841,797	3,850,585,748
Period Totals	\$14,725,090,057	\$4,717,248,342	\$1,887,029,797	\$550,743,872	\$1,318,795,123	\$181,601,900	\$68,482,443	\$23,448,901,444

- Audit data

Fiscal Year	Audit assessment amount (combined state and local)
1998	\$61,633,498
1999	\$42,216,972
2000	\$38,766,949
2001	\$34,622,399
2002	\$53,347,418
2003	\$44,857,505
2004	\$75,585,239

Streamline Revenue Impact

- **Difference between the voluntary impact and federally mandated impact**
 - Conformity does not equal immediate significant additional revenue
 - Amount of federal mandated collection will depend on "small" business threshold

- **Virginia impact of SB 514**
 - Until Congress requires out-of-state vendors to register and collect sales and use taxes, any additional revenue would come from vendors who voluntarily register and file
 - To benefit for any future Congressional action, Virginia must conform its sales and use tax laws to the terms of the agreement
 - Conformity to Streamline Agreement would allow Virginia to have a "seat at the table" on the Governing Board to shape the future direction of the National Streamline Project

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Range of National Studies

- **GAO June 2000 – 2003 Virginia losses**
 - Lower Scenario \$123 million all remote sales
 \$18 million Internet sales only
 - Higher Scenario \$458 million all remote sales
 \$224 million Internet sales only

- **University of Tennessee (I) September 2001 – Virginia losses**
 - 2001 \$238.5 million
 - 2006 \$817 million

- **Direct Marketing Association March 2003 – National losses**
 - 2003 \$2.4 billion
 - 2004 \$2.6 billion
 - 2005 \$2.8 billion
 - 2011 \$4.5 billion

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- **University of Tennessee (II) July 2004 – Virginia Losses**
 - 2003 Low-growth estimate = \$256.0 million total e-commerce loss
\$135.0 million new loss
 - 2003 High-growth estimate = \$266.8 million total loss
\$140.4 million new loss

 - 2008 Low-growth estimate = \$355.2.0 million total e-commerce loss
\$194.6 million new loss
 - 2008 High-growth estimate = \$555.4 million total loss
\$294.8 million new loss

Reasons for differing estimates

- Differing tax bases
- Differing nexus standards
- Unequal distribution of "bricks and mortar" retailers
- Differing audit coverage

**Joint Subcommittee to Study the
Impact of Collecting Remote Sales Taxes on the Economy of the
Commonwealth**

HOUSE JOINT RESOLUTION NO. 176 (2004)

<http://dls.state.va.us/HJR176.HTM>

October 19, 2004

10:00 a.m.

9th Floor Appropriations Room, General Assembly Building
Richmond, Virginia

Agenda

1. Call to order and opening remarks.
2. Follow-up issues from last meeting.
 - *Virginia Department of Taxation*
3. Perspectives on remote sales tax collection.
 - Senator Hanger
4. Proposals and recommendations.
 - Members of the Joint Subcommittee
5. Other business.
6. Adjournment.

MEMBERS

The Honorable Timothy D. Hugo
The Honorable R. Lee Ware, Jr.
The Honorable Lynwood W. Lewis, Jr.
The Honorable Emmett W. Hanger, Jr.
The Honorable Charles J. Colgan
Mr. John Backus
Mr. Steve DelBianco

Mr. Bill Frischling
Mr. Lee Goodman
Mr. Larry K. Pritchett
Mr. John W. Stewart
The Honorable John M. Bennett
The Honorable George C. Newstrom
The Honorable Michael J. Schewel

STAFF

David A. Rosenberg, Senior Attorney, Division of Legislative Services
Mark J. Vucci, Senior Attorney, Division of Legislative Services

**Joint Subcommittee to Study the
Impact of Collecting Remote Sales
Taxes on the Economy of the
Commonwealth**

HJR 176

**ADDITIONAL RETAIL SALES AND USE TAX
INFORMATION REQUESTED**

DEPARTMENT OF TAXATION

October 19, 2004

Additional Audit Data

Field Audit Data (All Taxes)

Revenue and Statistical Summary

	FY 02			FY 01		
	TOTAL FISCAL YTD	COMPILED TARGET YTD	TOTAL VARIANCE	TOTAL FISCAL YTD	COMPILED TARGET YTD	TOTAL VARIANCE
Completed Audits:						
<u>Number of Audits</u>						
Audit Selection	189	603	(414)	215	1,013	(798)
District Selection	3,058	2,772	286	3,373	2,624	749
Recurring Audit	336	373	(37)	290	635	(345)
Total	3,583	3,748	(165)	3,878	4,272	(394)
<u>Hours:</u>						
Audit Selection	9,918.10	34,178.80	(24,260.70)	8,544.85	48,754.00	-40,209.15
District Selection	124,490.36	109,270.20	15,220.16	124,533.92	102,630.20	21,903.72
Recurring Audit	40,004.40	36,803.00	3,201.40	29,570.80	43,444.80	-13,874.00
Total	174,412.86	180,252.00	(5,839.14)	162,649.57	194,829.00	(32,179.43)
<u>Assessments:</u>						
Audit Selection	\$ 9,752,102.13	\$ 16,500,931.00	\$ (6,748,828.87)	\$ 3,504,600.63	\$ 23,877,363.50	\$ (20,372,762.87)
District Selection	\$ 54,326,358.26	\$ 54,164,970.00	\$ 161,388.26	\$ 74,538,879.98	\$ 43,418,218.99	\$ 31,120,660.99
Recurring Audit	\$ 22,161,634.62	\$ 15,553,021.00	\$ 6,608,613.62	\$ 13,463,252.89	\$ 14,583,520.65	\$ (1,120,267.76)
Total	\$ 86,240,095.01	\$ 86,218,922.00	\$ 21,173.01	\$ 91,506,733.50	\$ 81,879,103.14	\$ 9,627,630.36
<u>Dollar/Hour Statistics:</u>						
Audit Selection	\$ 983.26	\$ 482.78	\$ 500.48	\$ 410.14	\$ 489.75	\$ (79.61)
District Selection	\$ 436.39	\$ 495.70	\$ (59.31)	\$ 598.54	\$ 350.19	\$ 248.35
Recurring Audit	\$ 553.98	\$ 422.60	\$ 131.38	\$ 455.29	\$ 423.05	\$ 32.24
Weighted Dollar Per Hour	\$ 494.46	\$ 478.32	\$ 16.14	\$ 562.60	\$ 420.26	\$ 142.34
<u>Audit In Progress Hours:</u>						
Audit Selection	9,002.60			9,158.80		
District Selection	138,959.00			128,107.43		
Recurring Audit	20,823.00			36,149.60		
Total	168,784.60			173,415.83		

Retail Sales and Use Tax Audits

- Similar to all audits conducted by TAX, some of the goals are:
 - Enforce Virginia tax laws
 - Educate Virginia taxpayers
 - Effectively provide General Fund compliance revenue
- Number of field audits conducted
 - 2,583 audits (Fiscal Year 2003)
 - 2,594 audits (Fiscal Year 2004)
- Selection of audit candidates
 - Audit Selection (automated process)
 - Extracts information regarding potential audit candidates from both internal and external sources
 - Cleans, validates and maps the data prior to loading data
 - Creates a single view of all sources found related to a potential audit candidate
 - Provides the ability to define, run, review results, and re-run selection programs
 - Recurring
 - Based on prior audit experience, taxpayer has been found to be underreporting tax liability
 - Generally taxpayers are kept on a 3-year audit schedule until compliance improves

- District Select
 - Taxpayers identified by local office as potential audit candidate
 - Auditors are part of local community and customers of local businesses

- Audit Measures
 - Audit candidates not necessarily stratified based on business size

 - More efficient use of auditors to concentrate on the types of audits that result in a higher measure of assessments per hour of audit time

 - Limited audit effort targeted to individual consumers
 - Furniture importers
 - ATV purchasers
 - Tractor and farm equipment purchasers

Resources Needed to Determine Local Revenue Sourcing Changes

Background

- Differences between origin sourcing and destination sourcing
 - Origin sourcing (Virginia)
 - Destination sourcing (Streamline)

- The impact of a change in sourcing is the potential shift in local sales tax revenue

- What other states have done
 - Texas and Washington
 - Both adopted Streamline without the local sourcing provisions
 - Both have been directed by legislature to determine fiscal impact of a sourcing change
 - Iowa, Kansas, Ohio, Tennessee, Utah
 - All have attempted sourcing switch
 - All have encountered in-state vendor complaints
 - All have had to delay effective date of sourcing changes or enacted temporary “relaxed enforcement” provisions

Washington Department of Revenue Study

- Most comprehensive study available
- Required by the 2003 Streamline legislation
- Attempted to determine “winners” and “losers” for all localities
- Department of Revenue was directed to use and regularly consult, a committee composed of city and county officials
- Took 6 months from date legislation required the study until first results were released
- Legislature appropriated \$50,000 for the survey
- Methodology employed:
 - Used existing data from the Departments of Revenue and Employment Security and data from a survey conducted by the Washington State University Social and Economic Sciences Research Center
 - The Departments of Revenue and Employment Security data included taxable retail sales by establishment, business location for each establishment, and business classification (industry)
 - The survey sample included approximately 2,400 businesses and was stratified by size and by industry classifications including:
 - Manufacturing
 - Printing
 - Transportation and warehousing
 - Wholesale
 - Furniture retailing
 - Electronics and appliances retailing

- Office supplies retailing
- Other retailers
- Businesses were asked questions in the survey about the percentage of sales made:
 - Remotely
 - From storefronts
 - From storefronts but delivered from a warehouse
 - To businesses
 - To households
 - To each county
- Businesses were also asked to break out their store-based delivered retail sales:
 - Within the city where the store is located.
 - Within a radius of miles (5, 10, etc.) of the store location.
 - Within the rest of the county.
 - Within the rest of the state.
- Survey was 7 pages in length
- Approximately 1,200 businesses responded to the survey.
- Survey responses were matched by Washington State University to data provided by the Department of Revenue and the Employment Security Department
- Survey results
 - Individual jurisdictions may incur net revenue losses if sales delivered outside their boundaries exceed the sales delivered inside their boundaries
 - An estimated 97 cities would lose revenues
 - Cities that would lose revenues generally contain businesses with warehouses or retail stores from which deliveries are made

- Smaller cities that serve as a local business hub to a larger community also tend to lose sales
- Almost all counties gain revenues (an estimated 34 out of 39), while two-thirds of the cities gain revenues (an estimated 184 out of 281)
- Jurisdictions that have a relatively high population base compared to their business base would tend to gain revenues
- Follow up
 - Many localities challenged results
 - Locality coding errors were discovered
 - Department of Revenue has spent the summer of 2004 “redefining” its report to address issues raised in the original report

Virginia Local Sourcing Study

- Premature to conduct study at this time
 - Sourcing still under consideration by SSTP
 - Ohio will propose a “small business” sourcing amendment to the agreement in November
 - Without a Governing Board, Virginia’s local sourcing has not been found to be “not in substantial compliance”

- Recommendations if a Virginia study is undertaken
 - Allow sufficient time to conduct the study
 - Mandate involvement by localities
 - Appropriate funding necessary to outsource the survey stage of the study
 - Timing of the study will impact TAX's ability to perform study and meet other commitments
 - Issue first study as "Draft" and expect to make revisions

Comments by the Virginia Petroleum, Convenience, and Grocery Association

Our Association is comprised of 660 Virginia-based companies that own, operate, or supply about 6,000 locations that provide food, fuel and convenience to Virginia consumers

I am not here this morning to advocate either side of the issue of imposing tax on internet sellers. Rather I am here to bring to your attention three specific issues contained in the streamlined sales tax plan that could negatively impact the convenience store, grocery and gasoline industries, and ask that you consider their potential impact on Virginia small businesses.

The first item is the issue of Buy downs

There are many examples of buy-downs but they are perhaps most pronounced in the tobacco business. Tobacco sales make up 27-34 percent of all in-store sales at Virginia convenience stores. It is a particularly competitive market and one methodology typically used by manufactures to maintain and increase sales is called buy downs. Under this system, a manufacturer provides, for example, a \$5.00 rebate to the c-store operator for every carton of his product sold and requires the store to pass this \$5.00 savings onto the consumer. Our understanding is that under the current SSTP, sales tax would be assessed on the \$5.00 buy-down. if true, it is unfair because the \$5.00 buy down is the result of a negotiated business transaction between two parties – the net result of which is a lower price. the present SSTP buy-down model will result in higher consumer prices.

The Second Issue is Shelf Space

The most valuable commodity in any store is visibility. Many suppliers are willing to pay a premium to have their products displayed prominently, and to accomplish this they often provide product discounts or other considerations to ensure that their products are viewed by the maximum number of consumers. There is concern that under SSTP states may impose tax on those discounts or shelf space reimbursements, which are once again

a result of a business transaction between buyer and seller. We STRONGLY OPPOSE taxation of shelf space discounts.

The Third issue is Advertising Cooperatives

Advertising cooperatives are vitally important not only to convenience and grocery stores but to gasoline marketers as well. The way ad cooperatives work is that a supplier - whether it be Coke, or Pepsi, or Exxon, or Shell provides our members a credit on future purchases in return for advertising their specific brand. You see these advertisements in newspapers, store circulars, billboards and the like. Cooperative advertising serves sellers and purchasers alike by increasing consumer awareness and brand loyalty. Consequently we oppose any provision of the SSTP that will impose a tax on advertising co-ops.

While we understand that intent of the streamlined sales tax is to level the playing field between competitors, we believe that it contains these unintended consequences that could have the potential to have very negative impacts on the local Virginia based small businesses that I represent.

Should this occur, the increased costs that result will ultimately find their way to the check out lines and the gasoline pump for Virginia consumers.

We ask you to keep this in mind as you continue your important deliberations.

Thank you.

**Report Card
on the
Streamlined Sales Tax
Implementing States'
Agreement**

October 11, 2002

Prepared by

COUNCIL ON STATE TAXATION (COST)

122 C Street, NW, Suite 330
Washington, DC 20001-2109
Telephone (202) 484-5222
Telefax (202) 484-5229
www.statetax.org

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Framing the Question

The delegates to the Streamlined Sales Tax Implementing States (SSTIS) have spent the last year reviewing the recommendations of the Streamlined Sales Tax Project (SSTP) and have developed an Agreement which will be voted on by the SSTIS during its November 2002 meeting. This Agreement, if legislatively adopted by the states, will define the manner in which businesses collect and pay sales and use tax throughout the country. In some states the Agreement will require minor changes; in others, radical modifications of the sales and use tax law will be necessary for compliance. In all states the Agreement would represent a major step towards a uniform and simpler sales and use tax structure. The question arises then whether the sales tax structure under the Agreement is sufficiently simple and uniform to justify congressional action permitting conforming states to require remote vendors to collect their sales and use tax. If so, it is essential that Congress simultaneously act to protect remote businesses from states' overreaching imposition of business activity taxes.

The Council On State Taxation (COST) issued its first report card on the SSTP's recommendations in November, 2001. That report card identified COST's standard for requiring remote vendors to collect sales and use tax and evaluated each of the SSTP's proposals against the standard. Since November 2001, the SSTIS has made many modifications to the proposals. COST is now reissuing its report card to indicate whether the SSTIS Agreement meets the standard of radical simplification, to identify areas of concern that remain, and discuss the relationship between business activity tax nexus standards and sales tax collection by remote vendors.

Sales Tax Simplification—While the sales tax should be nondiscriminatory – i.e., imposed on similarly situated vendors and goods, the remote vendors must not be subject to the burden imposed by thousands of taxing jurisdictions with thousands of disparate rules. Only if states have a truly simple, uniform system can remote vendors be required to collect their taxes. Radical simplification of the current sales tax is therefore required before Congress should consider removing existing limitations on the authority of states to require remote vendors to collect sales and use tax. The SSTIS Agreement defines the level of simplification and uniformity required of states in a voluntary collection system.¹ Should Congress consider making this system mandatory it must require states to meet the radical simplification standard and must uphold the standard over time by imposing an independent review of state compliance. The report card therefore indicates the necessity for federal oversight of state compliance with and governance of the Agreement should Congress require remote vendors to collect sales and use tax.

The report card compares the SSTIS Agreement with COST's Policy Statement on Simplification of the State and Local Sales and Use Tax System. The report card judges whether the requirements of the Agreement provide radical simplification of the current sales and use tax structure. In some instances the report card indicates that work is still being performed or that the assigned grade would change pending methods chosen to implement the requirement.

Radical Simplification— The word "radical" is used throughout this document because it conveys the level of change necessary to simplify the extraordinarily complex sales tax system we have today. As noted by Utah Governor Michael Leavitt, "The existing system is a mess...[and] it needs to be radically simplified."² According to Webster, "radical" means: fundamental; marked by a considerable departure from the usual or traditional; tending or disposed to make extreme changes in existing institutions.

¹ The current Agreement anticipates that remote vendors will voluntarily collect sales and use tax for each member state if that state's laws are consistent with the Agreement and the state provides a reasonable level of vendor compensation.

² Congressional Advisory Commission on Electronic Commerce, September 15, 1999.

The Relevance of Business Activity Tax Nexus Standards—Should Congress act to remove existing limitations on the authority of states to require remote vendors to collect sales and use tax, it is essential that it also formally recognize that a State has no right to impose a business activity tax on any business that does not have a physical presence in that jurisdiction. Businesses are concerned that the elimination of current protections for sales tax collection would encourage and abet the already inappropriate state efforts to impose business activity taxes on out-of-state companies with no physical presence in the state. To prevent overreaching by states, Congress should specifically recognize that states may not impose a business activity tax on a business unless that company has substantial nexus as a result of physical presence in the State (i.e., when the company is receiving the benefits and protections offered by the state). Sales tax simplification and the propriety of requiring remote vendors to collect sales tax cannot be evaluated in a vacuum. Should Congress choose to address sales tax collection responsibility, it must consider and address the implications for business activity tax nexus. This report card does not seek to evaluate current proposals for business activity tax nexus clarification; it simply articulates the need for congressional resolution of the business activity tax nexus issue along with sales tax collection responsibility.

Simplification of the State and Local Sales and Use Tax System

Policy Position of 2001-2002

Position: *A sales and use tax should be easily administered by both vendors and taxing authorities, widely understood by consumers, and nondiscriminatory between similarly situated vendors and goods. State governments relying on a sales and use tax should make it a priority to ensure these criteria are met.*

Explanation: The existing state and local sales and use tax system is widely recognized as unnecessarily complex and burdensome by representatives of state and local government and business. This unnecessary complexity imposes real costs on vendors, states, and consumers. A simple sales tax system offers the potential to increase state revenue, reduce tax rates for consumers, reduce administrative burdens for both business and the states, and increase voluntary compliance.

A simple sales and use tax system would have the following characteristics:

- **Neutrality** – Taxability should be independent of the method of commerce used in a transaction.
- **Efficiency** – Administrative costs should be minimized for both business and government.
- **Certainty and Simplicity** – Tax rules should be clear and simple.
- **Effectiveness and Fairness** – Taxation systems should minimize the possibility of evasion.
- **Flexibility** – Taxation systems should keep pace with changes in the economy.

A simple sales and use tax system would incorporate the following elements*:

- **Uniform Tax Base Definitions** – A uniform set of simple definitions from which individual states would determine their tax base.
- **Uniform Exemption Rules** – Removal of the good faith requirement for a vendor accepting an exemption certificate and allowance of a uniform, electronic exemption certificate.
- **Uniform and Centralized Administration** – A centralized, multistate vendor registration system; uniform tax returns and remittance forms; filing dates timed to allow collection of all relevant information; adequate notice of changes in law (at least 90 days); uniform audit procedures; uniform refund forms and procedures; and state administration of all local taxes.
- **One Rate and Base Per State** – Substantial rate simplification—preferably one rate per state—and a single tax base per state (including local taxes) that applies to taxable transactions in the state.
- **Uniform Sourcing Rules** – Uniform, simple rules sourcing transactions, with certain exceptions, on a destination/delivery basis. Where the destination/delivery location is unknown, sourcing rules should be based on information available to the vendor through its regular business activities with the consumer.
- **Bad Debt Deduction/Refund** – Uniform rules allowing a bad debt deduction/refund to vendors, assignees, or other third parties.
- **Uniform Direct Pay Permits and Registration Requirements.**
- **Technology Certification** – Uniform and technology-neutral procedures for certification of software that vendors may rely upon to determine their sales and use tax obligations.
- **Hold Harmless** – Elimination of liability for over or under collection of tax for vendors relying on state data or state-certified software.
- **Vendor Allowance** – Reasonable compensation to all vendors for their actual collection costs, to be determined by a study designed jointly by business and the States.

**This policy addresses the sales and use tax system as it impacts typical vendors selling consumer goods to individuals for personal use or consumption. Elements different from these may be useful or necessary in the context of business purchases.*

Jurisdiction to Tax—Constitutional

Policy Position of 2001-2002

Position: *In order for a State to impose a business activity tax on a business, that business must have a physical presence in that State.*

Explanation: There currently is a great amount of discussion and debate throughout the tax community, in the Congress, and elsewhere regarding the appropriate extent of state and local tax jurisdiction. This issue has become increasingly important in recent years due to the significant changes in the economy brought about by electronic commerce.¹

Determinations of jurisdiction to tax should be guided by one fundamental principle: a government has the right to impose burdens—economic as well as administrative—only on businesses that receive meaningful benefits or protections from that government. In the context of business activity taxes, this guiding principle means that businesses that are not present in a jurisdiction and are therefore not receiving any benefits or protections from the jurisdiction, should not be required to pay tax to that jurisdiction.

In the area of sales and use tax, the U.S. Supreme Court has ruled that substantial nexus requires physical presence. Although the Court has not made any similar ruling in the area of business activity taxes, numerous state courts at all levels have affirmed that the nexus standard for business activity taxes can be no less than the standard for sales and use tax.

Governments and taxpayers should work together to enact bright line nexus rules explaining both constitutional and practical nexus guidelines.

“Business activity tax” refers a to tax imposed directly on businesses and not generally passed directly on to consumers, such as corporate income taxes, franchise taxes, single business taxes, capital stock taxes, net worth taxes, gross receipts taxes, and business and occupation taxes.

¹ The appropriate extent of state and local tax jurisdiction was discussed at length during the proceedings of both the National Tax Association’s Communications and Electronic Commerce Tax Project (1997-99) and the federal Advisory Commission on Electronic Commerce (1999-2000).

Obligation to Collect State and Local Sales and Use Taxes

Policy Position of 2001-2002

Position: *If Congress chooses to remove existing federal limitations on the authority of States to compel remote vendors to collect sales and use tax, Congress should also: (1) require the States to radically simplify and reform the sales and use tax system for all vendors; and (2) formally recognize that a State has no right to impose a business activity tax on any business that does not have a physical presence in that jurisdiction.*

Explanation: There has been a tremendous amount of rhetoric and misinformation in the popular press about whether sales over the Internet are subject to state and local sales and use tax. The current law is succinct: vendors having a physical presence ("substantial nexus" as defined in *Quill*¹) in a state must collect and remit sales tax on all taxable sales in that state, and consumers are required to pay a use tax on all taxable purchases on which no tax was collected by the vendor. The law makes no distinction in tax application based on method of sale, whether in a store, through a catalogue, or over the Internet.

Remote vendors—vendors that do not have such physical presence in a state—are not required to collect sales or use tax for that state. States cannot compel remote vendors to collect sales or use tax on their behalf, in part, because the existing sales and use tax system is sufficiently complex as to constitute an unreasonable burden upon interstate commerce and, in part, because existing law has engendered substantial reliance by taxpayers.

The Congress has the authority to remove this existing limitation and allow states to compel remote vendors to collect and remit use tax. If Congress chooses to exercise such authority, it is appropriate for Congress to address the other issues raised in the *Quill* decision. First, Congress should require the states to radically simplify the sales and use tax system for all vendors, thus removing the existing unreasonable burden upon interstate commerce.³ Second, Congress should formally recognize that a State has no right to impose a business activity tax on any business that does not have substantial nexus with that jurisdiction.⁴

¹ *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992).

³ Please see *Simplification of the State and Local Sales and Use Tax System*, COST Policy Position of 2001-2002.

⁴ Please see *Jurisdiction to Tax—Constitutional*, COST Policy Position of 2001-2002.

COST Report Card on the Streamlined Sales Tax Implementing States' Agreement

October 11, 2002

COST commends the state government executive branch officials participating in the Streamlined Sales Tax Project (SSTP) and the delegates to the Streamlined Sales Tax Implementing States (SSTIS). This simplification effort has gone further and made a more sincere effort to simplify our complex sales and use tax system than have all previous groups that have grappled with this issue. State officials have listened to COST's concerns and have modified many of their proposals as a result of these comments. We recognize the genuine effort that state participants have made and applaud it.

The following report card evaluates the difficult substantive and administrative issues that must be addressed to realize a truly simple and uniform sales and use tax system. The tax simplification proposals included in the SSTIS version of the Agreement, which will be voted on during the November 2002 meeting, are compared against COST's policy position on state and local sales and use tax simplification. The provisions of the Agreement which govern the interstate compact aspect of this effort are analyzed based on COST's experience and understanding of similar multistate efforts, both tax and non-tax.

We have graded the various elements within each category on an A-F scale. The following is a description of the meaning behind each grade:

- A—Radical simplification
- B—Significant simplification
- C—Some simplification
- D—Insignificant simplification
- F—Not addressed by the Agreement, no simplification, or new complexity
- INC—Addressed by the Agreement, but too early to grade

What constitutes an acceptable grade? From the standpoint of simplification alone, any grade better than "D" indicates an improvement over the current system and thus ought to receive consideration. Thus, under a voluntary system, COST would support any real state effort to reduce complexity in the sales tax arena. If the context is not simplification for its own sake but instead Congressional legislation to permit states to impose a sales tax collection obligation on remote sellers, then a grade of B+ or better—meaning radical simplification—is necessary.

Category	COST Policy Statement	Previous Grade	Current Grade	Comments on Current SSTIS Agreement
Uniform Tax Base Definitions	A uniform set of simple definitions from which individual states would determine their tax base.	INC	B	The Agreement includes product definitions for items typically sold at retail for final consumption. Although the definitions result in occasionally ludicrous results (i.e., candy does not include licorice), they provide bright-line guidance necessary for retailers to make taxability decisions. The Agreement requires that member states develop and provide retailers with a taxability matrix, which, if used, will hold them harmless. The Agreement however does not require that states adopt definitions by statute and requires only that each states' law use <i>substantially</i> the same language as that adopted by the SSTIS. Numerous definitions, including "digital goods," are still under development. This grade would change from B to F if these definitions are overbroad. The Agreement also fails to adequately discourage states from using simplification as a justification for expanding their tax base.
Uniform Exemption Rules	Removal of the good faith requirement for a vendor accepting an exemption certificate and allowance of a uniform, electronic exemption certificate.	A	A	The Agreement provides radical simplification of exemption administration by eliminating the good faith requirement, shifting the burden to the states to monitor improper claims of exemption. This grade would change from A to F if the states implement the new exemption system by requiring vendors to keep, electronically, line-item detail on every exempt purchase.
Uniform and Centralized Administration	A centralized, multistate vendor registration system; uniform tax returns and remittance forms; filing dates timed to allow collection of all relevant information; adequate notice of changes in law (at least 90 days); uniform	A-	B / INC	The Agreement provides significant simplification of sales tax administration. While many of the implementing details have not been resolved, the Agreement provides a basic framework for administration that could significantly ease the burden on multistate sellers. Our grade would change from B to F based on the quality of implementation

	audit procedures; uniform refund forms/procedures; and state administration of all local taxes.			of the administrative provisions; specifically, the Agreement lacks current funding for administrative processes and standards are not yet developed for audits, returns, and centralized registration. The Agreement protects sellers from imposition of business activity taxes based on the sellers' registration, but not their <i>activities</i> during registration, under the Agreement. Congress should not require remote collection if the states fail to adequately fund and implement the administrative simplifications.
One Rate Per State	Substantial rate simplification--preferably one rate per state (including local taxes)--that applies to taxable transactions in the state.	C+	B-	The Agreement limits local taxing jurisdictions to a single tax rate, constrains their ability to change rates without proper notice, and eliminates all caps and thresholds unless their burden is borne by the consumer (except under sales tax holidays). The Agreement limits states to a single sales tax rate on tangible personal property and allows states to have a second rate only on food or drugs. While a single rate per state is preferable, it is unlikely that some of the larger states could participate if such a rule were adopted. The Agreement provides for a uniform rounding rule and makes tax boundaries coincident with nine-digit zip code boundaries. These simplifications could be improved by restricting state rate changes similar to local rate changes, mandating five-digit zip code jurisdictional boundaries or mandating a single tax rate per state (including local taxes). Congress should not require remote collection until the states have developed address-based jurisdictional databases and after the phase-out on caps and thresholds is complete.
One Base Per State	A single tax base per state (including local taxes) that applies to taxable transactions in the state.	B	B / INC	The Agreement requires state and local tax bases to be identical by 2006. While such a phase-in may be necessary in a voluntary agreement, Congress should

	to determine their sales and use tax obligations.			sales tax responsibility. Unfortunately, the software certification standards remain undefined. Reasonable vendor compensation (see below) must still be addressed to compensate vendors who have invested in such systems.
Hold Harmless	Elimination of liability for over or under collection of tax for vendors relying on state data or state-certified software.	B-	A-	The Agreement protects vendors from liability for under-collected tax and now provides a remedy for customers who have been over-charged sales or use tax, requiring customers to utilize a specific procedure to seek a return of the tax before filing a class-action suit against the seller. In addition, the Agreement creates a presumption that a vendor's use of a certified system constitutes a reasonable business practice, making it more difficult for consumers to bring frivolous class-action suits. In summary, the Agreement radically simplifies the burden on vendors by holding them harmless from under-collection and providing protection for vendors who have inadvertently over-collected tax. The Agreement could be improved by requiring member states to allow customers the right to obtain a refund from the state.
Vendor Allowance	Reasonable compensation to all vendors for their actual collection costs, to be determined by a study designed jointly by business and the States.	INC	F / INC	The Agreement fails to explicitly mandate reasonable vendor allowance for all vendors based on the findings of the Joint Collection Cost Study (JCCS). Were it not for the SSTP's participation in the JCCS, this category would receive a straight F. Congress should not require remote collection without requiring that vendors receive a reasonable allowance. The cost of credit card processing alone is at least 2.5% - 3% and could be adopted today as a minimum base for vendor compensation. Because any vendor allowance should also be based on the complexity of the sales tax system, a mandated allowance should provide a built-in incentive to further reduce residual complexity.

				not require remote collection until the phase-in is complete. States should also be prohibited from moving complexity out of the sales tax to transaction taxes not covered by the Agreement. Congress should not require remote collection if the states simply shift the complexity to new taxes. Rules for bundling, allocation of discounts, shipping and handling, and treatment of returns are not complete. Congress should not require remote collection until these issues are resolved.
Uniform Sourcing Rules	Uniform, simple rules sourcing transactions, with certain exceptions, on a destination/delivery basis. Where the destination/delivery location is unknown, sourcing rules should be based on information available to the vendor through its regular business activities with the consumer.	B+	B+	The sourcing rules in the Agreement represent a significant advance over current practice by providing uniformity in a critical area. These rules would benefit from clarifying any due diligence standards relating to the maintenance of addresses in general business records; and clarifying that payment processors and other third party participants in a transaction are not required to provide information to the vendor for sourcing purposes.
Bad Debt Deduction/Refund	Uniform rules allowing a bad debt deduction/refund to vendors, assignees, or other third parties.	B	B	Uniform provisions for bad debts are a necessary part of simplification, and the Project worked closely with industry to find the least objectionable language possible. As a matter of policy, though, the bad debt provisions remain inequitable in that they do not require bad debt assigned to a third party to be treated in the same way as debt held by the original vendor.
Uniform Direct Pay Permits and Registration Requirements	Uniform direct pay permits and centralized registration should be required.	INC	A	The Agreement requires member states to allow businesses to direct pay their sales tax liability on their own purchases. The Agreement also provides for a single point of registration. Each of these requirements constitutes radical simplification.
Technology Certification	Uniform and technology-neutral procedures for certification of software that vendors may rely upon	C	B / INC	The Agreement allows for certification of proprietary software in addition to certification of third party service providers who can administer a vendor's

Governance	Not separately addressed by COST policy statement.	F	A-/INC	<p>The Agreement contains an acceptable governance mechanism, keeping in mind that the Agreement is currently a voluntary association of states and vendors. Congress should not require remote collection without providing for federal oversight of state compliance and governance of the Agreement. The current system allows taxpayers and interested government groups to have input into the decision making process; open meetings and public comment are required. While the current Agreement provides a solid, basic structure for governance, our grade would change from A- to F based on the quality of implementation. Without adequate state funding the governance mechanism will not work. Further, because the governance provisions are written for a voluntary Agreement, and should be rewritten if Congress mandates collection by remote vendors, we have indicated that the governance structure for a mandatory system is incomplete. Congress should not require remote collection without defining a governance model that provides for limited but meaningful federal oversight.</p>
Interpretation	Not separately addressed by COST policy statement.	F	A-/INC	<p>The Agreement contains an acceptable mechanism for taxpayers to obtain interpretations of definitions or other provisions of the Agreement itself. Any person may request an interpretation or request that additional definitions be developed. While the current Agreement provides a solid, basic structure for issues of interpretation, our grade would change from A- to F based on the quality of implementation. Without adequate state funding the interpretation mechanism will not work. Further, because the interpretation provisions are written for a voluntary Agreement, and should be rewritten if Congress mandates collection by remote vendors, we have</p>

				indicated that the interpretation structure for a mandatory system is incomplete. Congress should not require remote collection without defining an interpretation process that will resolve questions on a timely basis without drastically infringing on state sovereignty. Limited but meaningful federal oversight is necessary to ensure timely uniform application of interpretations.
Issue Resolution Process	Not separately addressed by COST policy statement.	NA	A-/INC	Questions of state membership, matters of compliance, the possibility of sanctions, and issues of amendments and interpretation of the agreement, including differing interpretations among member states, can be brought by any person before an issue resolution process. This process includes independent review by a neutral third party or non-binding arbitration. While the current Agreement provides a solid, basic structure for issue resolution, our grade would change from A- to F based on the quality of implementation. Without adequate state funding the issue resolution process will not work. Further, because the issue resolution provisions are written for a voluntary Agreement, and should be rewritten if Congress mandates collection by remote vendors, we have indicated that the issue resolution procedures for a mandatory system are incomplete. Congress should not require remote collection without defining an issue resolution model that provides for limited but meaningful federal oversight.
Replacement Taxes	Not separately addressed by COST policy statement.	NA	F	The Agreement fails to discourage member states from shifting sales tax complexity into other transaction taxes. For example, Minnesota generally exempts clothing but taxes clothing made from fur. Because the Agreement does not provide a separate definition for clothing made from fur, Minnesota had

				to exempt such items from sales tax if it wanted to continue to exempt clothing. The State's "solution" was to create a separate "fur tax" identical to the previous sales tax. The Agreement also allows states to exclude certain sales taxes from coverage. Alabama has indicated that it will exclude its rental tax from the provisions of the Agreement. The result is additional complexity and the potential for double taxation. The Agreement fails to prohibit states from employing tactics so contrary to the goal of simplification.
Expansion of Tax Base	Not separately addressed by COST policy statement.	NA	C	The Agreement fails to discourage member states from using simplification as a reason for expanding their tax base. While the Agreement itself, and utilization of the uniform definitions required by the Agreement will undoubtedly have some minor revenue impact, and states are within their sovereign right to achieve revenue neutrality by increasing taxes or expanding the base, states should avoid the temptation to raise additional revenue by expanding their tax base as part of the simplification effort. The Agreement currently indicates that it is not the intent of the Agreement to indicate whether states should tax or exempt any particular product. This language should be strengthened to discourage states from expanding their tax base under the guise of simplification unless required incident to complying with the Agreement.

Joint Subcommittee to Study the Impact of Collecting Remote Sales Taxes on the Economy of the Commonwealth

HOUSE JOINT RESOLUTION NO. 176 (2004)

<http://dls.state.va.us/HJR176.HTM>

November 23, 2004

2:00 p.m.

House Room C, General Assembly Building
Richmond, Virginia

Agenda

1. Call to order and opening remarks.
2. Report on November 16 meeting of Implementing States of the Streamlined Sales Tax Project.
 - Senator Hanger
3. Consideration of findings and recommendations of the joint subcommittee.
 - Members of the Joint Subcommittee
4. Other business.
5. Adjournment.

MEMBERS

The Honorable Timothy D. Hugo, Chairman
The Honorable R. Lee Ware, Jr.
The Honorable Lynwood W. Lewis, Jr.
The Honorable Emmett W. Hanger, Jr.
The Honorable Charles J. Colgan
Mr. John Backus
Mr. Steve DelBianco

Mr. Bill Frischling
Mr. Lee Goodman
Mr. Larry K. Pritchett
Mr. John W. Stewart
The Honorable John M. Bennett
The Honorable Eugene J. Huang
The Honorable Michael J. Schewel

STAFF

David A. Rosenberg, Senior Attorney, Division of Legislative Services
Mark J. Vucci, Senior Attorney, Division of Legislative Services