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SENATE BILL NO. 521

Offered January 11, 2006

Prefiled January 11, 2006

A *BILL to amend and reenact §§ 58.1-3506 and 58.1-3916 of the Code of Virginia, relating to classifications of tangible personal property.*

Patrons—Newman and Hawkins; Delegate: Byron

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3506 and 58.1-3916 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3506. Other classifications of tangible personal property for taxation.

A. The items of property set forth below are each declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property provided in this chapter:

1. Boats or watercraft weighing five tons or more;

2. Aircraft having a maximum passenger seating capacity of no more than 50 which are owned and operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

3. Aircraft having a registered empty gross weight equal to or greater than 20,000 pounds that are not owned or operated by scheduled air carriers operating under certificates of public convenience and necessity issued by the State Corporation Commission or the Civil Aeronautics Board;

34. All other aircraft not included in ~~subdivision~~ subdivisions A 2 or A 3 and flight simulators;

45. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation purposes as provided in subsection C of § 46.2-730;

56. Tangible personal property used in a research and development business;

67. Heavy construction machinery not used for business purposes, including but not limited to land movers, bulldozers, front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural activity equipment and ditch and other types of diggers;

78. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any other alternative energy source for use in manufacturing and any cogeneration equipment purchased to achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment shall include, without limitation, such equipment purchased by firms engaged in the business of generating electricity or steam, or both;

89. Vehicles without motive power, used or designed to be used as manufactured homes as defined in § 36-85.3;

910. Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;

1011. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes only;

1112. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons, including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

1213. Motor vehicles specially equipped to provide transportation for physically handicapped individuals;

1314. Motor vehicles (i) owned by members of a volunteer rescue squad or volunteer fire department or (ii) leased by members of a volunteer rescue squad or volunteer fire department if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is owned by each volunteer rescue squad member or volunteer fire department member, or leased by each volunteer rescue squad member or volunteer fire department member if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, may be specially classified under this section, provided the volunteer rescue squad member or volunteer fire department member regularly responds to emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer, with a certification by the chief or head of the volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer fire department member is identified. The certification shall be submitted by January 31 of each year to

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59 the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other
60 assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on
61 the part of the member, to accept a certification after the January 31 deadline. In any county which
62 prorates the assessment of tangible personal property pursuant to § 58.1-3516, a replacement vehicle may
63 be certified and classified pursuant to this subsection when the vehicle certified as of the immediately
64 prior January date is transferred during the tax year;

65 1415. Motor vehicles (i) owned by auxiliary members of a volunteer rescue squad or volunteer fire
66 department or (ii) leased by auxiliary members of a volunteer rescue squad or volunteer fire department
67 if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor
68 vehicle. One motor vehicle which is regularly used by each auxiliary volunteer fire department or rescue
69 squad member may be specially classified under this section. The auxiliary member shall furnish the
70 commissioner of revenue, or other assessing officer, with a certification by the chief or head of the
71 volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or fire
72 department who regularly performs duties for the rescue squad or fire department, and the motor vehicle
73 is identified as regularly used for such purpose; however, if a volunteer rescue squad or fire department
74 member and an auxiliary member are members of the same household, that household shall be allowed
75 no more than two special classifications under this subdivision or subdivision 14 of this section. The
76 certification shall be submitted by January 31 of each year to the commissioner of revenue or other
77 assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in
78 his discretion, and for good cause shown and without fault on the part of the member, to accept a
79 certification after the January 31 deadline;

80 1416. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound
81 persons or provide transportation to senior or handicapped citizens in the community to carry out the
82 purposes of the nonprofit organization;

83 1417. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers
84 as defined in § 46.2-1900, which are used for recreational purposes only, and privately owned trailers as
85 defined in § 46.2-100 that are designed and used for the transportation of horses except those trailers
86 described in subdivision A 11 of § 58.1-3505;

87 1418. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use
88 of, one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as
89 certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written
90 statement to the commissioner of revenue or other assessing officer from the Department of Veterans
91 Services that the veteran has been so designated or classified by the Department of Veterans Services as
92 to meet the requirements of this section, and that his disability is service-connected. For purposes of this
93 section, a person is blind if he meets the provisions of § 46.2-739;

94 1419. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police
95 officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons
96 who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms
97 of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle which is
98 regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially
99 classified under this section. In order to qualify for such classification, any auxiliary police officer who
100 applies for such classification shall identify the vehicle for which this classification is sought, and shall
101 furnish the commissioner of revenue or other assessing officer with a certification from the governing
102 body which has appointed such auxiliary police officer or from the official who has appointed such
103 auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who
104 regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for
105 which the classification is sought is the vehicle which is regularly used for that purpose. The
106 certification shall be submitted by January 31 of each year to the commissioner of revenue or other
107 assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in
108 his discretion, and for good cause shown and without fault on the part of the member, to accept a
109 certification after the January 31 deadline;

110 1420. Until the first to occur of June 30, 2009, or the date that a special improvements tax is no
111 longer levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District
112 created pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used
113 in manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement
114 District, provided that such business personal property is put into service within the District on or after
115 July 1, 1999;

116 2021. Motor vehicles which use clean special fuels as defined in § 46.2-749.3;

117 2122. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility which is
118 properly licensed by the federal government, the Commonwealth, or both, and which is properly zoned
119 for such use. "Wild animals" means any animals which are found in the wild, or in a wild state, within
120 the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals

which are found in the wild, or in a wild state, and are native to a foreign country;

2223. Furniture, office, and maintenance equipment, exclusive of motor vehicles, which are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and which is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

2324. Motor vehicles, trailers and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce;

2425. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 18, except for subdivision A 17, of § 58.1-3503;

2526. Programmable computer equipment and peripherals employed in a trade or business;

2627. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational purposes only;

2728. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for recreational purposes only;

2829. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes only;

2930. Tangible personal property used in the provision of Internet services. For purposes of this subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables users to access content, information, electronic mail, and the Internet as part of a package of services sold to customers;

3031. Motor vehicles (i) owned by persons who serve as auxiliary, reserve or special deputy sheriffs or (ii) leased by persons who serve as auxiliary, reserve or special deputy sheriffs if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. For purposes of this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve or special deputy sheriff. One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to auxiliary deputy sheriff duties may be specially classified under this section. In order to qualify for such classification, any auxiliary deputy sheriff who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary deputy sheriff or from the official who has appointed such auxiliary deputy sheriff. That certification shall state that the applicant is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

3132. Forest harvesting and silvicultural activity equipment;

3233. Equipment used primarily for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as defined in § 32.1-162.21 or for products or purposes related to human embryo stem cells. For purposes of this section, biotechnology equipment means equipment directly used in activities associated with the science of living things; and

3334. Boats or watercraft weighing less than five tons, used for business purposes only.

B. The governing body of any county, city or town may levy a tax on the property enumerated in subsection A at different rates from the tax levied on other tangible personal property. The rates of tax and the rates of assessment shall (i) for purposes of subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 through 19, 20 through 22, and 24 through 33 of subsection A, not exceed that applicable to the general class of tangible personal property, (ii) for purposes of subdivisions A 56, A 78, A 1920, and A 2324, not exceed that applicable to machinery and tools, and (iii) for purposes of subdivision A 89, equal that applicable to real property.

C. (Effective January 1, 2006) Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed for tangible personal property taxes by a county, city, or town receiving a payment from the Commonwealth under Chapter 35.1 of this title for providing tangible personal property tax relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle at a rate not to exceed the rates of tax and rates of assessment required under such chapter.

§ 58.1-3916. Counties, cities and towns may provide dates for filing returns, set penalties, interest, etc.

Notwithstanding provisions contained in §§ 58.1-3518, 58.1-3900, 58.1-3913, 58.1-3915 and 58.1-3918, the governing body of any county, city or town may provide by ordinance the time for filing local license applications and annual returns of taxable tangible personal property, machinery and tools and merchants' capital. The governing body may also by ordinance establish due dates for the payment of local taxes; may provide that payment be made in a single installment or in two equal installments; may offer options, which may include coupon books and payroll deductions, which allow the taxpayer to determine whether to pay the tangible personal property tax through monthly, bimonthly, quarterly, or semiannual installments or in a lump sum, provided such taxes are paid in full by the final due date; may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees actually contracted for, not to exceed 20 percent of the delinquent taxes and other charges so collected. A locality that provides for payment of interest on delinquent taxes shall provide for interest at the same rate on overpayments due to erroneously assessed taxes to be paid to the taxpayer, provided that no interest shall be required to be paid on such refund if (i) the amount of the refund is \$10 or less or (ii) the refund is the result of proration pursuant to § 58.1-3516. A court that finds that an overpayment of local taxes has been made in an action brought pursuant to § 58.1-3984 shall award interest at the appropriate rate, notwithstanding the failure of the locality to conform its ordinance to the requirements of this section.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed 10 percent per year. The governing body may impose interest at a rate not to exceed the rate of interest established pursuant to § 6621 of the Internal Revenue Code of 1954, as amended, or 10 percent annually, whichever is greater, for the second and subsequent years of delinquency. No penalty for failure to pay a tax or installment shall exceed (i) 10 percent of the tax past due on such property; (ii) in the case of delinquent tangible personal property tax more than 30 days past due on property classified pursuant to subdivision A ~~4314~~, A ~~4415~~ or A ~~4819~~ of § 58.1-3506, which remains unpaid after 10 days' written notice sent by United States mail to the taxpayer of the intention to impose a penalty pursuant hereto, the penalty shall not exceed an amount equal to the difference between the tax due and owing with respect to such property and the tax that would have been due and owing if the property in question had been classified as general tangible personal property pursuant to § 58.1-3503; (iii) in the case of delinquent tangible personal property tax more than 30 days past due, 25 percent of the tax past due on such tangible personal property; (iv) in the case of delinquent remittance of excise taxes on meals, lodging, or admissions collected from consumers, 10 percent for the first month the taxes are past due, and five percent for each month thereafter, up to a maximum of 25 percent of the taxes collected but not remitted; or (v) \$10, whichever is greater. No penalty for failure to file a return shall be greater than 10 percent of the tax assessable on such return or \$10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The assessment of such penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance. Penalty for failure to file an application or return may be assessed on the day after such return or application is due; penalty for failure to pay any tax may be assessed on the day after the first installment is due. Any such penalty when so assessed shall become a part of the tax.

No penalty for failure to pay any tax shall be imposed for any assessment made later than two weeks prior to the day on which the taxes are due, if such assessment is made thereafter through the fault of a local official, and if such assessment is paid within two weeks after the notice thereof is mailed.

In the event a transfer of real property ownership occurs after January 1 of a tax year and a real estate tax bill has been mailed pursuant to §§ 58.1-3281 and 58.1-3912, the treasurer or other appropriate local official designated by ordinance of the local governing body in jurisdictions not having a treasurer, upon ascertaining that a property transfer has occurred, may invalidate a bill sent to the prior owner and reissue the bill to the new owner as permitted by § 58.1-3912, and no penalty for failure to pay any tax for any such assessment shall be imposed if the tax is paid within two weeks after the notice thereof is mailed.

Penalty and interest for failure to file a return or to pay a tax shall not be imposed if such failure was not the fault of the taxpayer, or was the fault of the commissioner of revenue or the treasurer, as the case may be. The failure to file a return or to pay a tax due to the death of the taxpayer or a medically determinable physical or mental impairment on the date the return or tax is due shall be

244 presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are
245 paid within 30 days of the due date; however, if there is a committee, legal guardian, conservator or
246 other fiduciary handling the individual's affairs, such return shall be filed or such taxes paid within 120
247 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall
248 accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any
249 required returns and pay any taxes which come due after the 120-day period. The treasurer shall make
250 determinations of fault relating exclusively to failure to pay a tax, and the commissioner of the revenue
251 shall make determinations of fault relating exclusively to failure to file a return. In jurisdictions not
252 having a treasurer or commissioner of the revenue, the governing body may delegate to the appropriate
253 local tax officials the responsibility to make the determination of fault.

254 The governing body may further provide by resolution for reasonable extensions of time, not to
255 exceed 90 days, for the payment of real estate and personal property taxes and for filing returns on
256 tangible personal property, machinery and tools and merchants' capital, and the business, professional,
257 and occupational license tax, whenever good cause exists. The official granting such extension shall
258 keep a record of every such extension. If any taxpayer who has been granted an extension of time for
259 filing his return fails to file his return within the extended time, his case shall be treated the same as if
260 no extension had been granted.

261 This section shall be the sole authority for local ordinances setting due dates of local taxes and
262 penalty and interest thereon, and shall supersede the provisions of any charter or special act.