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HOUSE BILL NO. 1388

Offered January 9, 2008

A BILL to amend and reenact § 58.1-609.3 of the Code of Virginia, relating to retail sales and use tax; exemption for certain computer equipment.

Patron—Wright

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-609.3 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-609.3. Commercial and industrial exemptions.

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

1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel.

3. Tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

5. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

7. Meals furnished by restaurants or food service operators to employees as a part of wages.

8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and supplies and materials used directly in maintaining and preparing textile products for rental or leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile products.

9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority

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HB1388

59 pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified
60 pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such
61 section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas
62 production, including gas, natural gas, and coalbed methane gas.

63 10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption
64 directly in the rendition of their services.

65 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
66 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
67 photocopying of products for sale or resale.

68 12. From July 1, 1994, and ending July 1, 2011, raw materials, fuel, power, energy, supplies,
69 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,
70 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of
71 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as
72 defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall
73 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a
74 usable condition consistent with commercial practices, and the gathering and transportation of raw
75 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and
76 equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their
77 use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or
78 in well area reclamation activities required by state or federal law.

79 13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or
80 distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or
81 space station of any kind possessing space flight capability, including the components thereof,
82 irrespective of whether such facility, system, vehicle, satellite, or station is returned to this
83 Commonwealth for subsequent use, storage or consumption in any manner when used to conduct
84 spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal
85 property placed on or used aboard any orbital or suborbital space facility, space propulsion system,
86 space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal
87 property is returned to this Commonwealth for subsequent use, storage or consumption in any manner
88 when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary
89 vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport
90 activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment
91 purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and
92 services provided to operate and maintain launch facilities, launch equipment, payload processing
93 facilities and payload processing equipment used to conduct spaceport activities.

94 For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a
95 facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

96 The exemptions provided by this subdivision shall not be denied by reason of a failure,
97 postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion
98 system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or
99 any components thereof.

100 14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible personal
101 property used primarily in the integrated process of designing, developing, manufacturing, or testing a
102 semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor
103 equipment without regard to whether the property is actually contained in or used in a cleanroom
104 environment, touches the product, is used before or after production, or is affixed to or incorporated into
105 real estate.

106 15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

107 16. Railroad rolling stock when sold or leased by the manufacturer thereof.

108 17. *Purchased or leased computer equipment used in data centers for the processing, storage,*
109 *retrieval, or communication of data, including but not limited to servers, routers, connections, and other*
110 *enabling hardware when part of a new investment of at least \$75 million in such exempt property, when*
111 *such investment results in the creation of at least 100 new jobs paying at least twice the prevailing*
112 *average wage within three years in Mecklenburg County. The exemption shall also apply to any such*
113 *computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased*
114 *or leased in the initial investment. The exemption shall not apply to any computer software sold*
115 *separately from the computer equipment, nor shall it apply to general building improvements or fixtures.*

116 *An entity that meets the conditions and criteria set forth in this subdivision may apply to the*
117 *Department of Taxation for a refund of any taxes paid on the eligible computer equipment after July 1,*
118 *2008. The Department of Taxation may require that the entity submit sales tax receipts along with the*
119 *refund application to qualify for the refund authorized by this subdivision.*