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SENATE BILL NO. 117

Offered January 9, 2008

Prefiled January 3, 2008

A BILL to amend and reenact § 58.1-609.3 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02, relating to tax preferences for communications companies.

Patron—Edwards

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 and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02 as follows:

§ 58.1-439.12:02. Tax credit for purchase of wireless and broadband service equipment.

A. For taxable years beginning on and after January 1, 2008, any taxpayer shall be allowed a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, in an amount equaling 30% of all expenditures made for the purchase and installation of wireless and broadband equipment used by the taxpayer in providing communications services including Internet access in rural areas within the Commonwealth. As used in this section, the term "rural areas" means any locality with an average overall population density of less than or equal to 120 people per square mile.

B. The total amount of tax credits granted to all taxpayers pursuant to this section shall not exceed \$10 million for each tax year. Taxpayers shall apply for the credit by making application to the Department of Taxation. In the event that applications for the credit exceed the \$10 million amount, the Department shall apportion the money by dividing the \$10 million by the total amount of tax credits applied for to determine the percentage each taxpayer shall receive.

In no event shall the amount of the credit for any taxpayer exceed the taxpayer's tax liability for such tax year. If the amount of such credit exceeds the taxpayer's tax liability for such tax year, the amount that exceeds such tax liability may be carried over for credit against income taxes in the next five tax years until the total amount of the tax credit has been taken.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities. For purposes of subsection B, the partnership, S corporation, or limited liability company making the expenditures shall apply to the Department of Taxation for the credit.

§ 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

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59 power, except for raw materials that are inputs to production of electricity, including fuel.

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

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

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

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

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

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

83 9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any
84 equipment that has not been certified to the Department of Taxation by a state certifying authority
85 pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified
86 pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such
87 section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas
88 production, including gas, natural gas, and coalbed methane gas.

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

91 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
92 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
93 photocopying of products for sale or resale.

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

105 13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or
106 distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or
107 space station of any kind possessing space flight capability, including the components thereof,
108 irrespective of whether such facility, system, vehicle, satellite, or station is returned to this
109 Commonwealth for subsequent use, storage or consumption in any manner when used to conduct
110 spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal
111 property placed on or used aboard any orbital or suborbital space facility, space propulsion system,
112 space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal
113 property is returned to this Commonwealth for subsequent use, storage or consumption in any manner
114 when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary
115 vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport
116 activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment
117 purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and
118 services provided to operate and maintain launch facilities, launch equipment, payload processing
119 facilities and payload processing equipment used to conduct spaceport activities.

120 For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a

121 facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

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

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

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

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

134 17. *Tangible personal property sold or leased to a telecommunications company, as defined in*
135 *§ 58.1-400.1, for use or consumption by such company directly in the rendition of its public service*
136 *shall be exempt in accordance with the following:*

137 *a. From January 1, 2009, through June 30, 2009, 25% of the purchase price;*

138 *b. From July 1, 2009, through June 30, 2010, 50% of the purchase price;*

139 *c. From July 1, 2010, through June 30, 2011, 75% of the purchase price; and*

140 *d. From July 1, 2011, and thereafter, 100% of the purchase price.*