

DEPARTMENT OF TAXATION

2008 Fiscal Impact Statement

1. **Patron** Harry R. Purkey

3. **Committee** House Finance

4. **Title** Machinery and Tools Tax; Exemption for
Certified Pollution Control Equipment and
Facilities

2. **Bill Number** HB 124

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would reclassify all machinery and tools used in manufacturing, mining, water well drilling, processing or reprocessing placed in service on or after January 1, 2010, except those used by farm wineries, as intangible personal property exempt from state and local taxation. This bill would also exempt from state and local taxation all certified pollution control equipment and facilities placed in service on or after January 1, 2010.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

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

8. **Fiscal implications:**

Administrative Costs Impact

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

This bill would have no impact on state revenues. As this bill would exempt certain machinery and tools and certified pollution control equipment and facilities from local taxation, this bill would have a negative impact on local revenues. The amount of this

impact is unknown. According to the Auditor of Public Account's Comparative Report of Local Government Revenues and Expenditures, local revenues from the machinery and tools tax totaled \$193 million in Fiscal Year 2004 and Fiscal Year 2005, and \$199 million in Fiscal Year 2006.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: No.

11. Other comments:

Machinery and Tools Tax

Generally, machinery and tools used in manufacturing, mining, water well drilling, processing or reprocessing, radio and television broadcasting, dairy, dry cleaning or a laundry business are segregated as a separate class of tangible personal property and are subject to local taxation only. The tax rate imposed on machinery and tools may not exceed that imposed on other classes of tangible personal property.

As established in a 1950 opinion of the Tax Commissioner, machinery and tools used in the manufacturing business are those machinery and tools (1) actually and directly used in manufacturing processes and (2) those machinery and tools used in the manufacturing business that are necessary in the particular manufacturing business and are used in connection with operation of machinery that is actually and directly used in manufacturing processes.

Intangible Personal Property

Under current law, intangible personal property is a separate class of property segregated for taxation by the Commonwealth. Localities are prohibited from taxing intangible personal property.

Certain personal property, while tangible in fact, has been designated as intangible and has been exempted from state and local taxation. For example, tangible personal property used in manufacturing, mining, water well drilling, radio or television broadcasting, dairy, dry cleaning or laundry businesses has been designated as exempt intangible personal property.

In the case of a manufacturing business, all personal property except machinery and tools, motor vehicles and delivery equipment used in the manufacturing business are considered to be intangible personal property. The 1950 opinion of the Tax Commissioner also established TAX's longstanding policy that idled machinery and tools are generally considered intangible personal property because they are not used in the manufacturing business. The opinion stated that in order to be considered "idle," machinery and tools must be in "prolonged and indefinite" disuse, not seasonal or occasional disuse, such that the machinery and tools are stored or storage of the machinery and tools would be proper if it were practicable to place the machinery and

tools into storage. The opinion stated that, as a general rule, machinery and tools may be considered idle if they have been discontinued in use for as long a period as one year prior to the date they are returnable for taxation, provided there is no reasonable prospect that they will return to an active state within at least one year after such date.

House Bill 2181 and Senate Bill 1151 (2007)

House Bill 2181 and Senate Bill 1151 (*Acts of Assembly 2007*, Chapters 191 and 159) provided for the uniform statewide classification and taxation of idle machinery and tools on a prospective basis, effective January 1, 2007. The new law codified TAX's administrative rulings holding that idle machinery and tools are to be classified as intangible personal property not subject to local taxation.

The new law also codified TAX's administrative rulings that machinery and tools are to be considered idled if they (1) have been discontinued in use continuously for at least one continuous year prior to any tax day, (2) are not in use on the tax day and (3) no reasonable prospect exists that such machinery and tools will be returned to use during the tax year.

The new law also provided an alternate rule for determining that machinery and tools are to be considered idle. The alternate rule requires that on and after January 1, 2007, the machinery and tools (1) be specifically identified in writing by the taxpayer to the commissioner of the revenue or other assessing official on or before April 1 of the current tax year as machinery and tools that will be withdrawn from service before tax day of the next tax year, (2) are not in use on the tax day, and (3) which have no reasonable prospect of being returned to use during the next tax year.

Certified Pollution Control Equipment and Facilities

Under current law, certified pollution control equipment and facilities are a separate class of property. Localities may, by ordinance, exempt or partially exempt such property from local taxation.

However, certified pollution control equipment and facilities consisting of equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, including equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as landfill gas or synthetic or natural gas recovered from waste, placed in service on or after July 1, 2006, are exempt from state and local taxation.

"Certified pollution control equipment and facilities" means any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to TAX as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas

recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to TAX by a state certifying authority.

"State certifying authority" means the State Water Control Board, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the Virginia Waste Management Board, for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

Proposal

This bill would reclassify all machinery and tools used in manufacturing, mining, water well drilling, processing or reprocessing placed in service on or after January 1, 2010, except those used by farm wineries, as intangible personal property exempt from state and local taxation as provided in Article X, Section 6 (a) (5) of the *Constitution of Virginia*.

This bill would also exempt from state and local taxation all certified pollution control equipment and facilities placed in service on or after January 1, 2010.

Similar Legislation

House Bill 911 would create a classification of intangible personal property for idle equipment, hardware or software, of a research and development, technology, high technology, or nanotechnology business.

cc : Secretary of Finance

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