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HOUSE BILL NO. 124

Offered January 9, 2008

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A BILL to amend and reenact §§ 58.1-1101, 58.1-3507, and 58.1-3660 of the Code of Virginia, relating to the classification of certain machinery and tools as intangible personal property and the exemption of certain certified pollution control equipment and facilities from taxation.

Patrons—Purkey and Moran

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1101, 58.1-3507, and 58.1-3660 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-1101. Classification.

A. The subjects of taxation classified by this section are hereby defined as intangible personal property:

1. Capital which is inventory, except wine while in the hands of a farm winery producer as defined in § 4.1-100, merchandise located in a foreign trade zone as defined in subdivision 7 of this subsection and any agricultural product held in this Commonwealth by any manufacturer for manufacturing or processing which is of such nature as customarily requires storage and processing for periods of more than one year in order to age or condition such product for manufacture. Such agricultural product shall be includible in inventory for one tax year only and after being taxed for one year shall thereafter be excluded for all succeeding tax years;

2. Capital which is personal property, tangible in fact, used in manufacturing (including, but not limited to, *machinery and tools, except machinery and equipment used by farm wineries as defined in § 4.1-100, used in manufacturing, mining, processing or reprocessing, placed in service on or after January 1, 2010,* furniture, fixtures, office equipment and computer equipment used in corporate headquarters), mining, water well drilling, radio or television broadcasting, dairy, dry cleaning or laundry businesses. Machinery and tools *(other than the machinery and tools described in the preceding sentence)*, motor vehicles and delivery equipment of such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;

2a. Personal property, tangible in fact, used in cable television businesses. Machines and tools, motor vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture and equipment of such businesses shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property;

3. Money;

4. Bonds, notes, and other evidences of debt; demands and claims;

5. Shares of stock;

6. Accounts receivable;

7. All imported and exported foreign merchandise or domestic merchandise scheduled for export while in inventory located in a foreign trade zone within the Commonwealth;

8. Computer application software, except computer application software which is inventory as defined in subdivision 1 of this subsection, is defined as computer instructions, in any form, which are designed to be read by a computer and to enable it to perform specific operations with data or information stored by the computer; and

9. Capital which is personal property, tangible in fact, used in commercial fishing businesses, and used in the water to catch or harvest seafood, including but not limited to crab pots, nets, tongs, and dredge equipment. Fishing vessels and property permanently attached to such vessels shall not be defined as intangible personal property for purposes of this chapter and shall be taxed locally as tangible personal property according to the applicable provisions of law relative to such property.

B. [Repealed.]

C. The subjects of intangible personal property set forth in subdivisions 1 through 9 of subsection A shall be exempt from taxation as provided in Article X, Section 6 (a) (5) of the Constitution of Virginia.

§ 58.1-3507. Certain machinery and tools segregated for local taxation only; notice prior to change in valuation, hearing.

A. Machinery and tools, except idle machinery and tools as defined in subsection D and machinery

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HB124

4/20/10 13:38

and equipment used by farm wineries as defined in § 4.1-100~~, used~~*:*

1. Used in a manufacturing, mining, water well drilling, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry business shall be listed and are hereby segregated as a class of tangible personal property separate from all other classes of property and shall be subject to local taxation only. The rate of tax imposed by a county, city or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property. Idle machinery and tools are taxable as capital under § 58.1-1101~~.~~*; or*

2. Used in manufacturing, mining, water well drilling, processing or reprocessing, placed in service on or after January 1, 2010, is defined as intangible personal property and shall be subject to state taxation only pursuant to Chapter 11 (§ 58.1-1100).

B. Machinery and tools *described in subdivision A 1* segregated for local taxation pursuant to subsection A, other than energy conservation equipment of manufacturers, shall be valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest. In valuing machinery and tools, the commissioner of the revenue shall, upon the written request of the taxpayer, consider any bona fide, independent appraisal presented by the taxpayer.

Whenever the commissioner of the revenue proposes to change the means of valuing machinery and tools, such proposed change shall be published in a newspaper having general circulation in the affected locality at least 30 days before the proposed change would take effect and the citizens of the locality shall be allowed to submit written comments, during the 30-day period, to the commissioner of the revenue regarding the proposed change.

C. All motor vehicles which are registered pursuant to § 46.2-600 with the Department of Motor Vehicles and owned by persons engaged in those businesses set forth in subsection A shall be taxed as tangible personal property by the county, city or town in accordance with the provisions of this chapter. All other motor vehicles and delivery equipment owned by persons engaged in those businesses set forth in subsection A shall be included in and taxed as machinery and tools.

D. "Idle machinery and tools" means machinery and tools that (i) (a) have been discontinued in use continuously for at least one year prior to any tax day or (b) on and after January 1, 2007, have been specifically identified in writing by the taxpayer to the commissioner of the revenue or other assessing official, on or before April 1 of such year, as machinery and tools that the taxpayer intends to withdraw from service not later than the next succeeding tax day and (ii) are not in use on the tax day and no reasonable prospect exists that such machinery and tools will be returned to use during the tax year.

E. In the event that any machinery and tools taken out of use subsequent to January 1, 2007, are returned to use after having been previously classified as idle machinery and tools pursuant to clause (i) (b) of subsection D, the taxpayer shall identify such machinery and tools to the commissioner of the revenue or other assessing official in writing on or before the next return due date without extension, and such machinery and tools shall be subject to tax in accordance with the procedures provided in § 58.1-3903 in the same manner as if such machinery and tools had been in use on the tax day of the year in which such return to use occurs. Any interest otherwise payable pursuant to applicable law or ordinance shall apply to taxes imposed pursuant to this subsection and paid after the due date, without regard to the fault of the taxpayer or lack thereof. Notwithstanding the provisions of § 58.1-3903, if the taxpayer has provided timely written notice of return to use in accordance with the provisions of this subsection, no penalty shall be levied with respect to any tax liability arising as a result of the return to use of machinery and tools classified as idle and actually idle prior to such return to use.

F. The Department of Taxation shall promulgate guidelines for the use of local governments in applying the provisions of this section related to idle machinery and tools. In preparing such guidelines, the Department shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) for guidelines promulgated on or before January 1, 2008, but shall cooperate with and seek the counsel of local officials and interested groups. After January 1, 2008, such guidelines shall be accorded the weight of a regulation under § 58.1-205 and any amendments to such guidelines shall be subject to the Administrative Process Act.

G. The Tax Commissioner shall have the authority to issue advisory written opinions in specific cases to interpret the provisions of this section related to idle machinery and tools and the guidelines issued pursuant to subsection F; however, the Tax Commissioner shall not be required to interpret any local ordinance. The guidelines and opinions issued pursuant to this section shall not be applicable as an interpretation of any other tax law.

§ 58.1-3660. Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation. 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, shall be exempt from state and local taxation pursuant to subsection d of Section 6 of Article X of the Constitution of Virginia.

Certified pollution control equipment and facilities, placed in service on or after January 1, 2010, shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia.

B. As used in this section:

"Certified pollution control equipment and facilities" shall mean 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 the Department of Taxation 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 the Department of Taxation by a state certifying authority.

"State certifying authority" shall mean 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.