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HOUSE BILL NO. 1347

Offered January 22, 2010

A BILL to amend and reenact §§ 58.1-609.3 and 58.1-3703 of the Code of Virginia, relating to tax exemptions for aviation companies.

Patrons—Gear and Pogge

Unanimous consent to introduce

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.3 and 58.1-3703 of the Code of Virginia are 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

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59 products.

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

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

68 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
69 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
70 photocopying of products for sale or resale.

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

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

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

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

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

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

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

111 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers
112 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter
113 ending November 2007, for the processing, storage, retrieval, or communication of data, including but
114 not limited to servers, routers, connections, and other enabling hardware when part of a new investment
115 of at least \$75 million in such exempt property, when such investment results in the creation of at least
116 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such
117 investment was made in accordance with a memorandum of understanding with the Virginia Economic
118 Development Partnership Authority entered into or amended between January 1, 2008, and December
119 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to
120 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The

exemption shall not apply to any computer software sold separately from the computer equipment, nor shall it apply to general building improvements or fixtures.

18. *Personal property purchased and used exclusively by an aviation company in its primary business that is directly related to operations under the guidance of the U.S. Department of Defense in active missions/sorties, simulations, and training of personnel.*

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed \$100 for any locality with a population greater than 50,000, \$50 for any locality with a population of 25,000 but no more than 50,000 and \$30 for any locality with a population smaller than 25,000. For purposes of this section, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. Such governing body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed \$50 by January 1, 2000. The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private businesses and industries entering into agreements for the establishment, installation, renovation, remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

C. No county, city, or town shall impose a license fee or levy any license tax:

1. On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as permitted by other provisions of law;

2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;

3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712 and 58.1-3713;

6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town. This subdivision shall not be construed as prohibiting any county, city or town from imposing a local license tax on a peddler at wholesale pursuant to § 58.1-3718;

7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

8. [Repealed.]

9. On or measured by receipts for management, accounting, or administrative services provided on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by an entity which is a member of an affiliated group

of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated entities from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in § 51.5-98;

15. [Expired.]

16. [Repealed.]

17. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;

18. (a) On or measured by receipts of a charitable nonprofit organization except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "charitable nonprofit organization" means an organization which is described in Internal Revenue Code § 501(c)(3) and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning.

(b) On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations;

19. On any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located provided the locality is otherwise authorized to tax such businesses and rental of real estate;

20. On total assessments paid by condominium unit owners for common expenses. "Common expenses" and "unit owner" have the same meanings as in § 55-79.41; or

21. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof or by the United States as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law; or

22. On any aviation company whose primary business is directly related to operations that facilitate and support the U.S. Department of Defense in active missions/sorties, simulations, and training of personnel.