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SENATE BILL NO. 130

Senate Amendments in [] — February 11, 2010

A *BILL to amend and reenact §§ 58.1-609.3 and 58.1-609.10 of the Code of Virginia, relating to sales and use tax exemption; computer equipment.*

Patrons Prior to Engrossment—Senators Stosch, Blevins, Hanger, Martin, McDougle, McWaters, Newman, Quayle, Ruff, Stuart, Vogel, Wagner and Watkins; Delegates: Bell, Richard P. and Wright

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.3 and 58.1-609.10 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 products.

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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
121 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. Beginning [~~January 1, 2010~~, July 1, 2010,] and ending June 30, 2020, computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment exempted in this paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a data center that (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009, of at least \$150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality. Prior to claiming such exemption, any qualifying person claiming the exemption must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying person claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial investment. The exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or other fixtures.

§ 58.1-609.10. Miscellaneous 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. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption. "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of 1) food, prepared food and meals and 2) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on less than 24 occasions in a calendar year.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

5. Tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

6. Tangible personal property purchased for use or consumption in the performance of maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the Commonwealth.

7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised, edited, reformatted or copied documents, including but not limited to documents stored on or transmitted by electronic media, to its client or to third parties in the course of the professional's rendition of services to its clientele.

8. (Effective until July 1, 2010) School lunches sold and served to pupils and employees of schools and subsidized by government; school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use by students attending a nonprofit college or other institution of learning, when sold (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified by a department or instructor of such institution of learning as required textbooks for students attending courses at such institution.

8. (Effective July 1, 2010) School lunches sold and served to pupils and employees of schools and

183 subsidized by government; school textbooks sold by a local board or authorized agency thereof; and
184 school textbooks sold for use by students attending a college or other institution of learning, when sold
185 (i) by such institution of learning or (ii) by any other dealer, when such textbooks have been certified
186 by a department or instructor of such institution of learning as required textbooks for students attending
187 courses at such institution.

188 9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases,
189 and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or
190 other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed
191 free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed
192 physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and
193 fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by
194 a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his
195 professional practice, regardless of whether such practice is organized as a sole proprietorship,
196 partnership, or professional corporation, or any other type of corporation in which the shareholders and
197 operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician
198 assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for
199 use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise
200 exempt under this section; and samples of prescription drugs and medicines and their packaging
201 distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and
202 Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and
203 drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of
204 § 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed
205 to be the user or consumer of all such medicines and drugs.

206 10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances,
207 catheters, urinary accessories, other durable medical equipment and devices, and related parts and
208 supplies specifically designed for those products; and insulin and insulin syringes, and equipment,
209 devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when
210 such items or parts are purchased by or on behalf of an individual for use by such individual. Durable
211 medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily
212 used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or
213 injury, and (iv) is appropriate for use in the home.

214 11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

215 12. Special equipment installed on a motor vehicle when purchased by a handicapped person to
216 enable such person to operate the motor vehicle.

217 13. Special typewriters and computers and related parts and supplies specifically designed for those
218 products used by handicapped persons to communicate when such equipment is prescribed by a licensed
219 physician.

220 14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation,
221 treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and
222 proprietary medicines distributed free of charge by the manufacturer, including packaging materials and
223 constituent elements and ingredients.

224 b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to
225 regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision
226 shall not apply to cosmetics.

227 15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt
228 from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political
229 subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

230 16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under
231 § 501(c)(3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant
232 to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church
233 membership while meeting together in a single location and (ii) in the libraries, offices, meeting or
234 counseling rooms or other rooms in the public church buildings used in carrying out the work of the
235 church and its related ministries, including kindergarten, elementary and secondary schools. The
236 exemption for such churches shall also include baptistries; bulletins, programs, newspapers and
237 newsletters that do not contain paid advertising and are used in carrying out the work of the church;
238 gifts including food for distribution outside the public church building; food, disposable serving items,
239 cleaning supplies and teaching materials used in the operation of camps or conference centers by the
240 church or an organization composed of churches that are exempt under this subdivision and which are
241 used in carrying out the work of the church or churches; and property used in caring for or maintaining
242 property owned by the church including, but not limited to, mowing equipment; and building materials
243 installed by the church, and for which the church does not contract with a person or entity to have
244 installed, in the public church buildings used in carrying out the work of the church and its related

ministries, including, but not limited to worship services; administrative rooms; and kindergarten, elementary, and secondary schools.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and olive pits.

19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

20. Beginning July 1, 2010 and ending June 30, 2020, computer equipment purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, provided that such computer equipment is purchased or leased for use in a data center that (a) is located in a Virginia locality, (b) results in a new capital investment on or after July 1, 2009 of at least \$150 million, and (c) results in the creation on or after July 1, 2009 of at least 50 new jobs associated with the operation or maintenance of the data center provided that such jobs pay at least one and one half times the prevailing average wage in that locality. Prior to claiming such exemption, any qualifying person claiming the exemption must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investments made and the number of new jobs created; the timeline for achieving the capital investment and new job goals; the repayment obligations should those goals not be achieved; and any conditions under which repayment by the qualifying person claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment purchased or leased to upgrade, supplement, or replace computer equipment purchased or leased in the initial investment. The exemption shall not apply to any computer software otherwise taxable under Chapter 6 of Title 58.1, Code of Virginia that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or fixtures.

[2. That beginning July 1, 2010, the Department of Taxation shall issue a refund of any tax imposed pursuant to Chapter 6 of Title 58.1 of the Code of Virginia on purchases that would, except for the date of purchase, otherwise qualify for exemption under subdivision 18 of § 58.1-609.3 made on or after July 1, 2009, and before July 1, 2010, paid by any person who meets the requirements for exemption set forth in subdivision 18 of § 58.1-609.3. 2. That after July 1, 2010, any person who meets the requirements for exemption set forth in subdivision 18 of § 58.1-609.3 shall be eligible for a grant in an amount equal to any tax imposed and paid by such person pursuant to Chapter 6 of Title 58.1 of the Code of Virginia on purchases that would, except for the date of purchase, otherwise qualify for the exemption under subdivision 18 of § 58.1-609.3 made on or after July 1, 2009, and before July 1, 2010.]

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