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HOUSE BILL NO. 1636

Offered January 12, 2011

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A *BILL to amend and reenact §§ 58.1-1101 and 58.1-3507 of the Code of Virginia, relating to intangible personal property tax; machinery and tools.*

Patrons—Purkey and Cole

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1101 and 58.1-3507 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, 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, motor~~ 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~~ 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-;

10. Capital which is personal property, tangible in fact, consisting of (i) machinery and tools used for business purposes, for the first three years after being brought into the Commonwealth from another state, and which are in the Commonwealth for the first time and (ii) machinery and tools used for business purposes, that are purchased new on or after July 1, 2011, and only for the first three years following the date of purchase. The provisions of this subdivision do not apply to (a) motor vehicles that are taxed as personal property or as machinery and tools pursuant to subsection C of § 58.1-3507 or (b) machinery and tools held as inventory for sale; and

11. Capital which is personal property, tangible in fact, consisting of machinery and tools, used for business purposes, which have been in use for at least 10 years, and are located in any county, city, or town in which the assessed value of the machinery and tools is greater than one percent of the original cost when it was purchased new. The provisions of this subdivision do not apply to (i) motor vehicles

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HB1636

59 *that are taxed as personal property or as machinery and tools pursuant to subsection C of § 58.1-3507*
60 *or (ii) machinery and tools held as inventory for sale.*

61 B. [Repealed.]

62 C. The subjects of intangible personal property set forth in subdivisions 1 through 9 11 of subsection
63 A shall be exempt from taxation as provided in Article X, Section 6 (a) (5) of the Constitution of
64 Virginia.

65 § 58.1-3507. Certain machinery and tools segregated for local taxation only; notice prior to change in
66 valuation, hearing.

67 A. Machinery and tools, *except machinery and tools set forth in § 58.1-1101, and* except idle
68 machinery and tools as defined in subsection D and machinery and equipment used by farm wineries as
69 defined in § 4.1-100, used in a manufacturing, mining, water well drilling, processing or reprocessing,
70 radio or television broadcasting, dairy, dry cleaning or laundry business shall be listed and are hereby
71 segregated as a class of tangible personal property separate from all other classes of property and shall
72 be subject to local taxation only. The rate of tax imposed by a county, city or town on such machinery
73 and tools shall not exceed the rate imposed upon the general class of tangible personal property. Idle
74 machinery and tools are taxable as capital under § 58.1-1101.

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

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

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

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

96 E. In the event that any machinery and tools taken out of use subsequent to January 1, 2007, are
97 returned to use after having been previously classified as idle machinery and tools pursuant to clause (i)
98 (b) of subsection D, the taxpayer shall identify such machinery and tools to the commissioner of the
99 revenue or other assessing official in writing on or before the next return due date without extension,
100 and such machinery and tools shall be subject to tax in accordance with the procedures provided in
101 § 58.1-3903 in the same manner as if such machinery and tools had been in use on the tax day of the
102 year in which such return to use occurs. Any interest otherwise payable pursuant to applicable law or
103 ordinance shall apply to taxes imposed pursuant to this subsection and paid after the due date, without
104 regard to the fault of the taxpayer or lack thereof. Notwithstanding the provisions of § 58.1-3903, if the
105 taxpayer has provided timely written notice of return to use in accordance with the provisions of this
106 subsection, no penalty shall be levied with respect to any tax liability arising as a result of the return to
107 use of machinery and tools classified as idle and actually idle prior to such return to use.

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

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