

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 58.1-609.3 of the Code of Virginia, relating to sales and use tax*  
 3 *exemption; computer equipment.*

4 [S 112]  
 5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 58.1-609.3 of the Code of Virginia is amended and reenacted as follows:**

8 § 58.1-609.3. Commercial and industrial exemptions.

9 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606  
 10 shall not apply to the following:

11 1. Personal property purchased by a contractor which is used solely in another state or in a foreign  
 12 country, which could be purchased by such contractor for such use free from sales tax in such other  
 13 state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or  
 14 country.

15 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of  
 16 tangible personal property for resale where such industrial materials either enter into the production of or  
 17 become a component part of the finished product; (ii) industrial materials that are coated upon or  
 18 impregnated into the product at any stage of its being processed, manufactured, refined, or converted for  
 19 resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or  
 20 supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or  
 21 resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging  
 22 tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to  
 23 produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or  
 24 for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or  
 25 replacements thereof, shall be exempt if the preponderance of their use is directly in processing,  
 26 manufacturing, refining, mining or converting products for sale or resale. The provisions of this  
 27 subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In  
 28 addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment,  
 29 or any other tangible personal property used by a public service corporation in the generation of electric  
 30 power, except for raw materials that are inputs to production of electricity, including fuel.

31 3. Tangible personal property sold or leased to a public service corporation engaged in business as a  
 32 common carrier of property or passengers by railway, for use or consumption by such common carrier  
 33 directly in the rendition of its public service.

34 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in  
 35 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying  
 36 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states  
 37 of the United States or its territories or possessions, or in foreign commerce between ports in the  
 38 Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or  
 39 tangible personal property used directly in the building, conversion or repair of the ships or vessels  
 40 covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant  
 41 vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used  
 42 exclusively or principally in interstate or foreign commerce.

43 5. Tangible personal property purchased for use or consumption directly and exclusively in basic  
 44 research or research and development in the experimental or laboratory sense.

45 6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign  
 46 commerce as a common carrier providing scheduled air service on a continuing basis to one or more  
 47 Virginia airports at least one day per week, for use or consumption by such airline directly in the  
 48 rendition of its common carrier service.

49 7. Meals furnished by restaurants or food service operators to employees as a part of wages.

50 8. Tangible personal property including machinery and tools, repair parts or replacements thereof,  
 51 and supplies and materials used directly in maintaining and preparing textile products for rental or  
 52 leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile  
 53 products.

54 9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any  
 55 equipment that has not been certified to the Department of Taxation by a state certifying authority  
 56 pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified

57 pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such  
58 section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas  
59 production, including gas, natural gas, and coalbed methane gas.

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

62 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of  
63 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or  
64 photocopying of products for sale or resale.

65 12. From July 1, 1994, and ending July 1, 2016, raw materials, fuel, power, energy, supplies,  
66 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,  
67 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of  
68 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as  
69 defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall  
70 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a  
71 usable condition consistent with commercial practices, and the gathering and transportation of raw  
72 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and  
73 equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their  
74 use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or  
75 in well area reclamation activities required by state or federal law.

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

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

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

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

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

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

105 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers  
106 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter  
107 ending November 2007, for the processing, storage, retrieval, or communication of data, including but  
108 not limited to servers, routers, connections, and other enabling hardware when part of a new investment  
109 of at least \$75 million in such exempt property, when such investment results in the creation of at least  
110 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such  
111 investment was made in accordance with a memorandum of understanding with the Virginia Economic  
112 Development Partnership Authority entered into or amended between January 1, 2008, and December  
113 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to  
114 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The  
115 exemption shall not apply to any computer software sold separately from the computer equipment, nor  
116 shall it apply to general building improvements or fixtures.

117 18. Beginning July 1, 2010, and ending June 30, 2020, computer equipment or enabling software

118 purchased or leased for the processing, storage, retrieval, or communication of data, including but not  
119 limited to servers, routers, connections, and other enabling hardware, including chillers and backup  
120 generators used or to be used in the operation of the equipment exempted in this paragraph, provided  
121 that such computer equipment or enabling software is purchased or leased for use in a data center that  
122 (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009,  
123 of at least \$150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs  
124 *by the data center operator and the tenants of the data center, collectively*, associated with the operation  
125 or maintenance of the data center provided that such jobs pay at least one and one-half times the  
126 prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new  
127 jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at  
128 least 150 percent of the average statewide unemployment rate for such year as determined by the  
129 Virginia Economic Development Partnership or is located in an enterprise zone. *This exemption applies*  
130 *to the data center operator and the tenants of the data center if they collectively meet the requirements*  
131 *listed in this section.* Prior to claiming such exemption, any qualifying person claiming the exemption,  
132 *including a data center operator on behalf of itself and its tenants*, must enter into a memorandum of  
133 understanding with the Virginia Economic Development Partnership Authority that at a minimum  
134 provides the details for determining the amount of capital investment made and the number of new jobs  
135 created, the timeline for achieving the capital investment and new job goals, the repayment obligations  
136 should those goals not be achieved, and any conditions under which repayment by the qualifying ~~person~~  
137 *data center or data center tenant* claiming the exemption may be required. In addition, the exemption  
138 shall apply to any such computer equipment or enabling software purchased or leased to upgrade,  
139 supplement, or replace computer equipment or enabling software purchased or leased in the initial  
140 investment. The exemption shall not apply to any other computer software otherwise taxable under  
141 Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply  
142 to general building improvements or other fixtures.  
143 **2. That this act shall be effective for purchases or leases of computer equipment or enabling**  
144 **software made on or after July 1, 2012, for use in a data center that (i) meets the requirements of**  
145 **subdivision 18 of § 58.1-609.3 of the Code of Virginia on or after January 1, 2009, and (ii) enters**  
146 **into a memorandum of understanding on or after January 1, 2009, with the Virginia Economic**  
147 **Development Partnership Authority prior to claiming such exemption.**  
148 **3. That the provisions of this act shall expire on June 30, 2020.**