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HOUSE BILL NO. 859**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on March 1, 2016)

(Patron Prior to Substitute—Delegate Landes)

A BILL to amend and reenact § 58.1-609.3 of the Code of Virginia, relating to sales and use tax exemption; equipment used to make beer.

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-609.3 of the Code of Virginia is 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.

9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any equipment that has not been certified to the Department of Taxation by a state certifying authority pursuant to such section.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption

60 directly in the rendition of their services.

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

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

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

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

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

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

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

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

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

116 18. (Effective until June 30, 2020) Beginning July 1, 2010, and ending June 30, 2020, computer
117 equipment or enabling software purchased or leased for the processing, storage, retrieval, or
118 communication of data, including but not limited to servers, routers, connections, and other enabling
119 hardware, including chillers and backup generators used or to be used in the operation of the equipment
120 exempted in this paragraph, provided that such computer equipment or enabling software is purchased or
121 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 by the data center operator and the tenants of the data center, collectively, 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. The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies to the data center operator and the tenants of the data center if they collectively meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption, including a data center operator on behalf of itself and its tenants, 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 data center or data center tenant 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.

18. (Effective June 30, 2020) Beginning 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. The requirement of at least 50 new jobs is reduced to 25 new jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate for such year as determined by the Virginia Economic Development Partnership or is located in an enterprise zone. 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.

19. *If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to subdivision 1 or 2 of § 4.1-208, (i) machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing, or conversion into beer where such materials either enter into the production of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.*