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SENATE BILL NO. 268

Offered January 10, 2018

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A BILL to amend and reenact §§ 58.1-3503 and 58.1-3506 of the Code of Virginia, relating to personal property tax; computer equipment and peripherals used in data centers.

Patrons—Dunnavant; Delegates: Adams, D.M. and Bagby

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3503 and 58.1-3506 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3503. General classification of tangible personal property.

A. Tangible personal property is classified for valuation purposes according to the following separate categories which are not to be considered separate classes for rate purposes:

1. Farm animals, except as exempted under § 58.1-3505.

2. Farm machinery, except as exempted under § 58.1-3505.

3. Automobiles, except those described in subdivisions 7, 8, and 9 of this subsection and in subdivision A 8 of § 58.1-3504, which shall be valued by means of a recognized pricing guide or if the model and year of the individual automobile are not listed in the recognized pricing guide, the individual vehicle may be valued on the basis of percentage or percentages of original cost. In using a recognized pricing guide, the commissioner shall use either of the following two methods. The commissioner may use all applicable adjustments in such guide to determine the value of each individual automobile, or alternatively, if the commissioner does not utilize all applicable adjustments in valuing each automobile, he shall use the base value specified in such guide which may be either average retail, wholesale, or loan value, so long as uniformly applied within classifications of property. If the model and year of the individual automobile are not listed in the recognized pricing guide, the taxpayer may present to the commissioner proof of the original cost, and the basis of the tax for purposes of the motor vehicle sales and use tax as described in § 58.1-2405 shall constitute proof of original cost. If such percentage or percentages of original cost do not accurately reflect fair market value, or if the taxpayer does not supply proof of original cost, then the commissioner may select another method which establishes fair market value.

4. Trucks of less than two tons, which may be valued by means of a recognized pricing guide or, if the model and year of the individual truck are not listed in the recognized pricing guide, on the basis of a percentage or percentages of original cost.

5. Trucks and other vehicles, as defined in § 46.2-100, except those described in subdivisions 4, and 6 through 10 of this subsection, which shall be valued by means of either a recognized pricing guide using the lowest value specified in such guide or a percentage or percentages of original cost.

6. Manufactured homes, as defined in § 36-85.3, which may be valued on the basis of square footage of living space.

7. Antique motor vehicles, as defined in § 46.2-100, which may be used for general transportation purposes as provided in subsection C of § 46.2-730.

8. Taxicabs.

9. Motor vehicles with specially designed equipment for use by the handicapped, which shall not be valued in relation to their initial cost, but by determining their actual market value if offered for sale on the open market.

10. Motorcycles, mopeds, all-terrain vehicles, and off-road motorcycles as defined in § 46.2-100, campers and other recreational vehicles, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

11. Boats weighing under five tons and boat trailers, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

12. Boats or watercraft weighing five tons or more, which shall be valued by means of a percentage or percentages of original cost.

13. Aircraft, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

14. Household goods and personal effects, except as exempted under § 58.1-3504.

15. Tangible personal property used in a research and development business, which shall be valued by means of a percentage or percentages of original cost.

16. Programmable computer equipment and peripherals used in business which shall be valued by

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59 means of a percentage or percentages of original cost to the taxpayer, or by such other method as may
60 reasonably be expected to determine the actual fair market value.

61 17. *Computer equipment and peripherals used in a data center, as defined in subdivision A 43 of*
62 *§ 58.1-3506, which shall be valued by means of a percentage or percentages of original cost.*

63 18. All tangible personal property employed in a trade or business other than that described in
64 subdivisions 1 through 16 of this subsection 17, which shall be valued by means of a percentage or
65 percentages of original cost.

66 ~~18.~~ 19. Outdoor advertising signs regulated under Article 1 (§ 33.2-1200 et seq.) of Chapter 12 of
67 Title 33.2.

68 ~~19.~~ 20. All other tangible personal property.

69 B. Methods of valuing property may differ among the separate categories, so long as each method
70 used is uniform within each category, is consistent with requirements of this section and may reasonably
71 be expected to determine actual fair market value as determined by the commissioner of revenue or
72 other assessing official; however, assessment ratios shall only be used with the concurrence of the local
73 governing body. A commissioner of revenue shall upon request take into account the condition of the
74 property. The term "condition of the property" includes, but is not limited to, technological obsolescence
75 of property where technological obsolescence is an appropriate factor for valuing such property. The
76 commissioner of revenue shall make available to taxpayers on request a reasonable description of his
77 valuation methods. Such commissioner, or other assessing officer, or his authorized agent, when using a
78 recognized pricing guide as provided for in this section, may automatically extend the assessment if the
79 pricing information is stored in a computer.

80 **§ 58.1-3506. Other classifications of tangible personal property for taxation.**

81 A. The items of property set forth below are each declared to be a separate class of property and
82 shall constitute a classification for local taxation separate from other classifications of tangible personal
83 property provided in this chapter:

84 1. a. Boats or watercraft weighing five tons or more, not used solely for business purposes;

85 b. Boats or watercraft weighing less than five tons, not used solely for business purposes;

86 2. Aircraft having a maximum passenger seating capacity of no more than 50 that are owned and
87 operated by scheduled air carriers operating under certificates of public convenience and necessity issued
88 by the State Corporation Commission or the Civil Aeronautics Board;

89 3. Aircraft having a registered empty gross weight equal to or greater than 20,000 pounds that are
90 not owned or operated by scheduled air carriers recognized under federal law, but not including any
91 aircraft described in subdivision 4;

92 4. Aircraft that are (i) considered Warbirds, manufactured and intended for military use, excluding
93 those manufactured after 1954, and (ii) used only for (a) exhibit or display to the general public and
94 otherwise used for educational purposes (including such flights as are necessary for testing, maintaining,
95 or preparing such aircraft for safe operation), or (b) airshow and flight demonstrations (including such
96 flights necessary for testing, maintaining, or preparing such aircraft for safe operation), shall constitute a
97 new class of property. Such class of property shall not include any aircraft used for commercial
98 purposes, including transportation and other services for a fee;

99 5. All other aircraft not included in subdivisions A 2, A 3, or A 4 and flight simulators;

100 6. Antique motor vehicles as defined in § 46.2-100 which may be used for general transportation
101 purposes as provided in subsection C of § 46.2-730;

102 7. Tangible personal property used in a research and development business;

103 8. Heavy construction machinery not used for business purposes, including land movers, bulldozers,
104 front-end loaders, graders, packers, power shovels, cranes, pile drivers, forest harvesting and silvicultural
105 activity equipment and ditch and other types of diggers;

106 9. Generating equipment purchased after December 31, 1974, for the purpose of changing the energy
107 source of a manufacturing plant from oil or natural gas to coal, wood, wood bark, wood residue, or any
108 other alternative energy source for use in manufacturing and any cogeneration equipment purchased to
109 achieve more efficient use of any energy source. Such generating equipment and cogeneration equipment
110 shall include, without limitation, such equipment purchased by firms engaged in the business of
111 generating electricity or steam, or both;

112 10. Vehicles without motive power, used or designed to be used as manufactured homes as defined
113 in § 36-85.3;

114 11. Computer hardware used by businesses primarily engaged in providing data processing services
115 to other nonrelated or nonaffiliated businesses;

116 12. Privately owned pleasure boats and watercraft, 18 feet and over, used for recreational purposes
117 only;

118 13. Privately owned vans with a seating capacity of not less than seven nor more than 15 persons,
119 including the driver, used exclusively pursuant to a ridesharing arrangement as defined in § 46.2-1400;

120 14. Motor vehicles specially equipped to provide transportation for physically handicapped

121 individuals;

122 15. Motor vehicles (i) owned by members of a volunteer emergency medical services agency or a
123 member of a volunteer fire department or (ii) leased by volunteer emergency medical services personnel
124 or a member of a volunteer fire department if the volunteer is obligated by the terms of the lease to pay
125 tangible personal property tax on the motor vehicle. One motor vehicle that is owned by each volunteer
126 member who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or
127 volunteer fire department member, or leased by each volunteer member who meets the definition of
128 "emergency medical services personnel" in § 32.1-111.1 or volunteer fire department member if the
129 volunteer is obligated by the terms of the lease to pay tangible personal property tax on the motor
130 vehicle, may be specially classified under this section, provided the volunteer regularly responds to
131 emergency calls. The volunteer shall furnish the commissioner of revenue, or other assessing officer,
132 with a certification by the chief of the volunteer emergency medical services agency or volunteer fire
133 department, that the volunteer is an individual who meets the definition of "emergency medical services
134 personnel" in § 32.1-111.1 or a member of the volunteer fire department who regularly responds to calls
135 or regularly performs other duties for the emergency medical services agency or fire department, and the
136 motor vehicle owned or leased by the volunteer is identified. The certification shall be submitted by
137 January 31 of each year to the commissioner of revenue or other assessing officer; however, the
138 commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good
139 cause shown and without fault on the part of the volunteer, to accept a certification after the January 31
140 deadline. In any county that prorates the assessment of tangible personal property pursuant to
141 § 58.1-3516, a replacement vehicle may be certified and classified pursuant to this subsection when the
142 vehicle certified as of the immediately prior January date is transferred during the tax year;

143 16. Motor vehicles (i) owned by auxiliary members of a volunteer emergency medical services
144 agency or volunteer fire department or (ii) leased by auxiliary members of a volunteer emergency
145 medical services agency or volunteer fire department if the auxiliary member is obligated by the terms
146 of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is
147 regularly used by each auxiliary volunteer fire department or emergency medical services agency
148 member may be specially classified under this section. The auxiliary member shall furnish the
149 commissioner of revenue, or other assessing officer, with a certification by the chief of the volunteer
150 emergency medical services agency or volunteer fire department, that the volunteer is an auxiliary
151 member of the volunteer emergency medical services agency or fire department who regularly performs
152 duties for the emergency medical services agency or fire department, and the motor vehicle is identified
153 as regularly used for such purpose; however, if a volunteer meets the definition of "emergency medical
154 services personnel" in § 32.1-111.1 or volunteer fire department member and an auxiliary member are
155 members of the same household, that household shall be allowed no more than two special
156 classifications under this subdivision or subdivision 15. The certification shall be submitted by January
157 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of
158 revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and
159 without fault on the part of the auxiliary member, to accept a certification after the January 31 deadline;

160 17. Motor vehicles owned by a nonprofit organization and used to deliver meals to homebound
161 persons or provide transportation to senior or handicapped citizens in the community to carry out the
162 purposes of the nonprofit organization;

163 18. Privately owned camping trailers as defined in § 46.2-100, and privately owned travel trailers as
164 defined in § 46.2-1500, which are used for recreational purposes only, and privately owned trailers as
165 defined in § 46.2-100, which are designed and used for the transportation of horses except those trailers
166 described in subdivision A 11 of § 58.1-3505;

167 19. One motor vehicle owned and regularly used by a veteran who has either lost, or lost the use of,
168 one or both legs, or an arm or a hand, or who is blind or who is permanently and totally disabled as
169 certified by the Department of Veterans Services. In order to qualify, the veteran shall provide a written
170 statement to the commissioner of revenue or other assessing officer from the Department of Veterans
171 Services that the veteran has been so designated or classified by the Department of Veterans Services as
172 to meet the requirements of this section, and that his disability is service-connected. For purposes of this
173 section, a person is blind if he meets the provisions of § 46.2-100;

174 20. Motor vehicles (i) owned by persons who have been appointed to serve as auxiliary police
175 officers pursuant to Article 3 (§ 15.2-1731 et seq.) of Chapter 17 of Title 15.2 or (ii) leased by persons
176 who have been so appointed to serve as auxiliary police officers if the person is obligated by the terms
177 of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is
178 regularly used by each auxiliary police officer to respond to auxiliary police duties may be specially
179 classified under this section. In order to qualify for such classification, any auxiliary police officer who
180 applies for such classification shall identify the vehicle for which this classification is sought, and shall
181 furnish the commissioner of revenue or other assessing officer with a certification from the governing

body that has appointed such auxiliary police officer or from the official who has appointed such auxiliary officers. That certification shall state that the applicant is an auxiliary police officer who regularly uses a motor vehicle to respond to auxiliary police duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

21. Until the first to occur of June 30, 2019, or the date that a special improvements tax is no longer levied under § 15.2-4607 on property within a Multicounty Transportation Improvement District created pursuant to Chapter 46 (§ 15.2-4600 et seq.) of Title 15.2, tangible personal property that is used in manufacturing, testing, or operating satellites within a Multicounty Transportation Improvement District, provided that such business personal property is put into service within the District on or after July 1, 1999;

22. Motor vehicles which use clean special fuels as defined in § 46.2-749.3, which shall not include any vehicle described in subdivision 38 or 40;

23. Wild or exotic animals kept for public exhibition in an indoor or outdoor facility that is properly licensed by the federal government, the Commonwealth, or both, and that is properly zoned for such use. "Wild animals" means any animals that are found in the wild, or in a wild state, within the boundaries of the United States, its territories or possessions. "Exotic animals" means any animals that are found in the wild, or in a wild state, and are native to a foreign country;

24. Furniture, office, and maintenance equipment, exclusive of motor vehicles, that are owned and used by an organization whose real property is assessed in accordance with § 58.1-3284.1 and that is used by that organization for the purpose of maintaining or using the open or common space within a residential development;

25. Motor vehicles, trailers, and semitrailers with a gross vehicle weight of 10,000 pounds or more used to transport property for hire by a motor carrier engaged in interstate commerce;

26. All tangible personal property employed in a trade or business other than that described in subdivisions A 1 through A 49 20, except for subdivision A 47 18, of § 58.1-3503;

27. Programmable computer equipment and peripherals employed in a trade or business;

28. Privately owned pleasure boats and watercraft, motorized and under 18 feet, used for recreational purposes only;

29. Privately owned pleasure boats and watercraft, nonmotorized and under 18 feet, used for recreational purposes only;

30. Privately owned motor homes as defined in § 46.2-100 that are used for recreational purposes only;

31. Tangible personal property used in the provision of Internet services. For purposes of this subdivision, "Internet service" means a service, including an Internet Web-hosting service, that enables users to access content, information, electronic mail, and the Internet as part of a package of services sold to customers;

32. Motor vehicles (i) owned by persons who serve as auxiliary, reserve, volunteer, or special deputy sheriffs or (ii) leased by persons who serve as auxiliary, reserve, volunteer, or special deputy sheriffs if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. For purposes of this subdivision, the term "auxiliary deputy sheriff" means auxiliary, reserve, volunteer, or special deputy sheriff. One motor vehicle that is regularly used by each auxiliary deputy sheriff to respond to auxiliary deputy sheriff duties may be specially classified under this section. In order to qualify for such classification, any auxiliary deputy sheriff who applies for such classification shall identify the vehicle for which this classification is sought, and shall furnish the commissioner of revenue or other assessing officer with a certification from the governing body that has appointed such auxiliary deputy sheriff or from the official who has appointed such auxiliary deputy sheriff. That certification shall state that the applicant is an auxiliary deputy sheriff who regularly uses a motor vehicle to respond to such auxiliary duties, and it shall state that the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

33. Forest harvesting and silvicultural activity equipment;

34. Equipment used primarily for research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including medical, pharmaceutical, nutritional, and other health-related purposes; agricultural purposes; or environmental purposes but not for human cloning purposes as defined in § 32.1-162.21 or

for products or purposes related to human embryo stem cells. For purposes of this section, biotechnology equipment means equipment directly used in activities associated with the science of living things;

35. Boats or watercraft weighing less than five tons, used for business purposes only;

36. Boats or watercraft weighing five tons or more, used for business purposes only;

37. Tangible personal property which is owned and operated by a service provider who is not a CMRS provider and is not licensed by the FCC used to provide, for a fee, wireless broadband Internet service. For purposes of this subdivision, "wireless broadband Internet service" means a service that enables customers to access, through a wireless connection at an upload or download bit rate of more than one megabyte per second, Internet service, as defined in § 58.1-602, as part of a package of services sold to customers;

38. Low-speed vehicles as defined in § 46.2-100;

39. Motor vehicles with a seating capacity of not less than 30 persons, including the driver;

40. Motor vehicles powered solely by electricity;

41. Tangible personal property designed and used primarily for the purpose of manufacturing a product from renewable energy as defined in § 56-576;

42. Motor vehicles leased by a county, city, town, or constitutional officer if the locality or constitutional officer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle;

43. Computer equipment and peripherals used in a data center. For purposes of this subdivision, "data center" means a facility whose primary services are the storage, management, and processing of digital data and is used to house (i) computer and network systems, including associated components such as servers, network equipment and appliances, telecommunications, and data storage systems; (ii) systems for monitoring and managing infrastructure performance; (iii) equipment used for the transformation, transmission, distribution, or management of at least one megawatt of capacity of electrical power and cooling, including substations, uninterruptible power supply systems, all electrical plant equipment, and associated air handlers; (iv) Internet-related equipment and services; (v) data communications connections; (vi) environmental controls; (vii) fire protection systems; and (viii) security systems and services;

44. Motor vehicles (i) owned by persons who serve as uniformed members of the Virginia Defense Force pursuant to Article 4.2 (§ 44-54.4 et seq.) of Chapter 1 of Title 44 or (ii) leased by persons who serve as uniformed members of the Virginia Defense Force pursuant to Article 4.2 (§ 44-54.4 et seq.) of Chapter 1 of Title 44 if the person is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle. One motor vehicle that is regularly used by a uniformed member of the Virginia Defense Force to respond to his official duties may be specially classified under this section. In order to qualify for such classification, any person who applies for such classification shall identify the vehicle for which the classification is sought and shall furnish to the commissioner of the revenue or other assessing officer a certification from the Adjutant General of the Department of Military Affairs under § 44-11. That certification shall state that (a) the applicant is a uniformed member of the Virginia Defense Force who regularly uses a motor vehicle to respond to his official duties, and (b) the vehicle for which the classification is sought is the vehicle that is regularly used for that purpose. The certification shall be submitted by January 31 of each year to the commissioner of the revenue or other assessing officer; however, the commissioner of revenue or other assessing officer shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline;

45. If a locality has adopted an ordinance pursuant to subsection D of § 58.1-3703, tangible personal property of a business that qualifies under such ordinance for the first two tax years in which the business is subject to tax upon its personal property pursuant to this chapter. If a locality has not adopted such ordinance, this classification shall apply to the tangible personal property for such first two tax years of a business that otherwise meets the requirements of subsection D of § 58.1-3703;

46. Miscellaneous and incidental tangible personal property employed in a trade or business that is not classified as machinery and tools pursuant to Article 2 (§ 58.1-3507 et seq.), merchants' capital pursuant to Article 3 (§ 58.1-3509 et seq.), or short-term rental property pursuant to Article 3.1 (§ 58.1-3510.4 et seq.), and has an original cost of less than \$500. A county, city, or town shall allow a taxpayer to provide an aggregate estimate of the total cost of all such property owned by the taxpayer that qualifies under this subdivision, in lieu of a specific, itemized list; and

47. Commercial fishing vessels and property permanently attached to such vessels.

B. The governing body of any county, city or town may levy a tax on the property enumerated in subsection A at different rates from the tax levied on other tangible personal property. The rates of tax and the rates of assessment shall (i) for purposes of subdivisions A 1, 2, 3, 4, 5, 6, 8, 11 through 20, 22 through 24, and 26 through 47, not exceed that applicable to the general class of tangible personal

305 property, (ii) for purposes of subdivisions A 7, 9, 21, and 25, not exceed that applicable to machinery
306 and tools, and (iii) for purposes of subdivision A 10, equal that applicable to real property. If an item of
307 personal property is included in multiple classifications under subsection A, then the rate of tax shall be
308 the lowest rate assigned to such classifications.

309 C. Notwithstanding any other provision of this section, for any qualifying vehicle, as such term is
310 defined in § 58.1-3523, (i) included in any separate class of property in subsection A and (ii) assessed
311 for tangible personal property taxes by a county, city, or town receiving a payment from the
312 Commonwealth under Chapter 35.1 (§ 58.1-3523 et seq.) for providing tangible personal property tax
313 relief, the county, city, or town may levy the tangible personal property tax on such qualifying vehicle
314 at a rate not to exceed the rates of tax and rates of assessment required under such chapter.