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SENATE BILL NO. 590

Offered January 8, 2020

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A *BILL to amend and reenact §§ 58.1-439.7, 58.1-602, 58.1-609.3, and 58.1-3507 of the Code of Virginia, relating to advanced recycling; incentives in income tax, sales tax, and machinery and tools tax.*

Patrons—Hanger and Lewis; Delegate: Avoli

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.7, 58.1-602, 58.1-609.3, and 58.1-3507 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.7. Tax credit for purchase of machinery and equipment used for advanced recycling and processing recyclable materials.

A. 1. For taxable years beginning on and after January 1, 1999, but before January 1, 2020 2025, a taxpayer shall be allowed a credit against the tax imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3 of this title, in an amount equal to 20 percent of the purchase price paid during the taxable year for (i) machinery and equipment used predominantly in or on the premises of manufacturing facilities or plant units which manufacture, process, compound, or produce items of tangible personal property from recyclable materials, within the Commonwealth, for sale and (ii) *machinery and equipment used predominantly in or on the premises of facilities that are predominantly engaged in advanced recycling, as defined in § 58.1-602.* For purposes of determining "purchase price paid" under this section, the taxpayer may use the original total capitalized cost of such machinery and equipment, less capitalized interest.

2. The Department of Environmental Quality shall certify that such machinery and equipment are integral to the recycling process before the taxpayer shall be allowed the tax credit under this section. The taxpayer shall also submit purchase receipts and invoices as may be necessary to confirm the taxpayer's statement of purchase price paid, with the income tax return to verify the amount of purchase price paid for the recycling machinery and equipment.

3. No taxpayer shall be denied the credit under this section based solely on another person's use of the tangible personal property produced by the taxpayer, provided that the tangible personal property was sold by the taxpayer to an unaffiliated person in an arm's-length sale.

4. No credit shall be allowed under this section for machinery and equipment unless the machinery and equipment manufacture, process, compound, or produce items of tangible personal property from recyclable materials.

B. ~~The total credit allowed under this section in any taxable year shall not exceed 40 percent of the Virginia income tax liability of such taxpayer.~~ *If the amount of credit allowed under this section exceeds the Virginia income tax liability of such taxpayer, the excess shall constitute an overpayment, as described in § 58.1-309, and the Department shall refund such overpayment to the taxpayer unless the taxpayer elects to transfer the credit pursuant to subsection F.*

C. ~~Any~~ *For credit issued for taxable years beginning before January 1, 2020, any tax credit not used for the taxable year in which the purchase price on recycling machinery and equipment was paid may be carried over for credit against the taxpayer's income taxes in the 10 succeeding taxable years until the total credit amount is used. For credit issued for taxable years beginning on and after January 1, 2020, the taxpayer shall not carry forward any unused credit.*

D. The Department of Taxation shall administer the tax credits under this section. Beginning with credits allowable for taxable year 2015, in no case shall the Department issue more than \$2 million in tax credits pursuant to this section in any fiscal year of the Commonwealth. A taxpayer shall not be allowed to claim any tax credit unless it has applied to the Department of Environmental Quality for certification as described in subdivision A 2 and the Department of Environmental Quality has issued a written certification stating that the machinery and equipment purchased are integral to the recycling process. If the amount of tax credits approved under this section by the Department of Taxation for any taxable year exceeds \$2 million, the Department shall apportion the credits by dividing \$2 million by the total amount of tax credits so approved, to determine the percentage of otherwise allowed tax credits each taxpayer shall receive.

E. In the event a corporation converts to a partnership, limited liability company, or electing small business corporation (S corporation), such business entity shall be entitled to any unused credits of the

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59 corporation. Credits earned by a partnership, limited liability company, electing small business
60 corporation (S corporation), or a predecessor corporation entitled to such credits, shall be allocated to the
61 individual partners, members, or shareholders, respectively, in proportion to their ownership or interest
62 in such business entities.

63 *F. 1. Any taxpayer holding a credit under this section may transfer unused but otherwise allowable*
64 *credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount*
65 *of credit under this section shall file a notification of such transfer to the Department in accordance*
66 *with procedures and forms prescribed by the Tax Commissioner. The transferred credits may be*
67 *retroactively applied from the date such credits were originally issued, and the transferee may file an*
68 *amended return under this chapter to claim such transferred credit for a prior tax year. However,*
69 *nothing in this section shall be construed to extend the statute of limitations for filing an amended*
70 *return under § 58.1-1823 or any other provision of law.*

71 *2. No transfer of tax credits pursuant to the provisions of this subsection shall be allowed unless*
72 *such transfer occurs within one calendar year of the credit holder's earning such credit.*

73 *3. Only tax credits issued in taxable years beginning on and after January 1, 2020, shall be*
74 *transferable pursuant to the provisions of this subsection.*

75 **§ 58.1-602. Definitions.**

76 As used in this chapter, unless the context clearly shows otherwise:

77 *"Advanced recycling" means the operation of a single-stream or multi-stream recycling plant that*
78 *converts waste materials into new materials for resale by processing them and breaking them down into*
79 *their raw constituents. "Advanced recycling" includes the operation of a materials recovery facility or*
80 *materials reclamation facility that receives, separates, and prepares recyclable materials for sale to*
81 *end-user manufacturers.*

82 *"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines,*
83 *billboards, broadcasting and other media, including, without limitation, the providing of concept, writing,*
84 *graphic design, mechanical art, photography and production supervision. Any person providing*
85 *advertising as defined in this section shall be deemed to be the user or consumer of all tangible personal*
86 *property purchased for use in such advertising.*

87 *"Amplification, transmission and distribution equipment" means, but is not limited to, production,*
88 *distribution, and other equipment used to provide Internet-access services, such as computer and*
89 *communications equipment and software used for storing, processing and retrieving end-user subscribers'*
90 *requests.*

91 *"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with*
92 *the object of gain, benefit or advantage, either directly or indirectly.*

93 *"Cost price" means the actual cost of an item or article of tangible personal property computed in the*
94 *same manner as the sales price as defined in this section without any deductions therefrom on account*
95 *of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.*

96 *"Custom program" means a computer program that is specifically designed and developed only for*
97 *one customer. The combining of two or more prewritten programs does not constitute a custom*
98 *computer program. A prewritten program that is modified to any degree remains a prewritten program*
99 *and does not become custom.*

100 *"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or*
101 *storage by the distributee, and the use, consumption, or storage of tangible personal property by a*
102 *person that has processed, manufactured, refined, or converted such property, but does not include the*
103 *transfer or delivery of tangible personal property for resale or any use, consumption, or storage*
104 *otherwise exempt under this chapter.*

105 *"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental*
106 *of tangible personal property or for furnishing services, computed with the same deductions, where*
107 *applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use,*
108 *but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying*
109 *charges, service charges, or interest from credit extended on the lease or rental of tangible personal*
110 *property under conditional lease or rental contracts or other conditional contracts providing for the*
111 *deferred payments of the lease or rental price.*

112 *"Gross sales" means the sum total of all retail sales of tangible personal property or services as*
113 *defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" does not*
114 *include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the*
115 *Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the*
116 *article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city*
117 *under § 58.1-605 or 58.1-606.*

118 *"Import" and "imported" are words applicable to tangible personal property imported into the*
119 *Commonwealth from other states as well as from foreign countries, and "export" and "exported" are*
120 *words applicable to tangible personal property exported from the Commonwealth to other states as well*

as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, "integrated process" does not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected worldwide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. "Manufacturing" also includes the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination of whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" includes, but is not limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but is not limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, "modular building" does not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person that owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person that purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which it is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided that such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, also includes Internet service regardless of whether the provider of such

182 service is also a telephone common carrier.

183 "Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation,
184 joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver,
185 auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body
186 politic or political subdivision, whether public or private, or quasi-public, and the plural of "person"
187 means the same as the singular.

188 "Prewritten program" means a computer program that is prepared, held or existing for general or
189 repeated sale or lease, including a computer program developed for in-house use and subsequently sold
190 or leased to unrelated third parties.

191 "Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of
192 every kind and description, and all other equipment determined by the Tax Commissioner to constitute
193 railroad rolling stock.

194 "Remote seller" means any dealer deemed to have sufficient activity within the Commonwealth to
195 require registration under § 58.1-613 under the criteria specified in subdivision C 10 or 11 of
196 § 58.1-612 or any software provider acting on behalf of such dealer.

197 "Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in
198 the form of tangible personal property or services taxable under this chapter, and shall include any such
199 transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale
200 must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale
201 for resale which is not in strict compliance with such regulations shall be personally liable for payment
202 of the tax.

203 The terms "retail sale" and a "sale at retail" specifically include the following: (i) the sale or charges
204 for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous
205 days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in
206 which rooms, lodging, space, or accommodations are regularly furnished to transients for a
207 consideration; (ii) sales of tangible personal property to persons for resale when because of the operation
208 of the business, or its very nature, or the lack of a place of business in which to display a certificate of
209 registration, or the lack of a place of business in which to keep records, or the lack of adequate records,
210 or because such persons are minors or transients, or because such persons are engaged in essentially
211 service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds
212 due to the difficulty of policing such business operations; (iii) the separately stated charge made for
213 automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during
214 its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a
215 provider of satellite television programming to the customer of such programming. Equipment sold to a
216 provider of satellite television programming for subsequent lease or purchase by the customer of such
217 programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate
218 regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on
219 the cost price of such tangible personal property to such persons and may refuse to issue certificates of
220 registration to such persons. The terms "retail sale" and a "sale at retail" also specifically include the
221 separately stated charge made for supplies used during automotive repairs whether or not there is
222 transfer of title or possession of the supplies and whether or not the supplies are attached to the
223 automobile. The purchase of such supplies by an automotive repairer for sale to the customer of such
224 repair services shall be deemed a sale for resale.

225 The term "transient" does not include a purchaser of camping memberships, time-shares,
226 condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in,
227 real estate, however created or sold and whether registered with the Commonwealth or not. Further, a
228 purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a
229 specific real estate project on an ongoing basis throughout its term shall not be deemed a transient,
230 provided, however, that the term or time period involved is for seven years or more.

231 The terms "retail sale" and "sale at retail" do not include a transfer of title to tangible personal
232 property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i)
233 at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the
234 transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the
235 purchaser manufactures goods.

236 "Retailer" means every person engaged in the business of making sales at retail, or for distribution,
237 use, consumption, or storage to be used or consumed in the Commonwealth.

238 "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional
239 or otherwise, in any manner or by any means whatsoever, of tangible personal property and any
240 rendition of a taxable service for a consideration, and includes the fabrication of tangible personal
241 property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and
242 the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on
243 the premises of the person furnishing, preparing, or serving such tangible personal property. A

transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" does not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the price of the meal. Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property that may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. "Tangible personal property" does not include stocks, bonds, notes, insurance or other obligations or securities. "Tangible personal property" includes (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. "Use" does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. "Use" does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as defined in this section.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities that are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, "used directly" refers to the activities specified in this definition and, in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator, including, but not limited to, Internet service.

§ 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:

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

309 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of
310 tangible personal property for resale where such industrial materials either enter into the production of or
311 become a component part of the finished product; (ii) industrial materials that are coated upon or
312 impregnated into the product at any stage of its being processed, manufactured, refined, or converted for
313 resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or
314 supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or
315 resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging
316 tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to
317 produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or
318 for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or
319 replacements thereof, shall be exempt if the preponderance of their use is directly in processing,
320 manufacturing, refining, mining or converting products for sale or resale. The provisions of this
321 subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In
322 addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment,
323 or any other tangible personal property used by a public service corporation in the generation of electric
324 power, except for raw materials that are inputs to production of electricity, including fuel, or for
325 machinery, tools, and equipment used to generate energy derived from sunlight or wind. The exemption
326 for machinery, tools, and equipment used to generate energy derived from sunlight or wind shall expire
327 June 30, 2027.

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

331 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in
332 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying
333 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states
334 of the United States or its territories or possessions, or in foreign commerce between ports in the
335 Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or
336 tangible personal property used directly in the building, conversion or repair of the ships or vessels
337 covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant
338 vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used
339 exclusively or principally in interstate or foreign commerce.

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

342 6. Notwithstanding the provisions of subdivision 20 of § 58.1-609.10, all tangible personal property
343 sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier
344 providing scheduled air service on a continuing basis to one or more Virginia airports at least one day
345 per week, for use or consumption by such airline directly in the rendition of its common carrier service.

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

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

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

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

356 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
357 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
358 photocopying of products for sale or resale.

359 12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies,
360 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,
361 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of
362 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as
363 defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall
364 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a
365 usable condition consistent with commercial practices, and the gathering and transportation of raw
366 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and

equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

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

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

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

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

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

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

17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter ending November 2007, for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware when part of a new investment of at least \$75 million in such exempt property, when such investment results in the creation of at least 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such investment was made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority entered into or amended between January 1, 2008, and December 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The 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 July 1, 2010, and ending June 30, 2035, 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 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.

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.

20. *If the preponderance of their use is in advanced recycling, (i) machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for processing, manufacturing, or conversion for resale where such materials either are recycled or recovered; and (iii) materials, including containers, labels, sacks, cans, boxes, drums, or bags used for packaging recycled or recovered material for shipment or resale.*

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

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

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

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

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

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

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

490 use of machinery and tools classified as idle and actually idle prior to such return to use.

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

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