

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4 [S 590]

5 Approved

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

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

9 **§ 58.1-439.7. Tax credit for purchase of machinery and equipment used for advanced recycling**
 10 **and processing recyclable materials.**

11 A. 1. For taxable years beginning on and after January 1, 1999, but before January 1, ~~2020~~ 2025, a
 12 taxpayer shall be allowed a credit against the tax imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and
 13 10 (§ 58.1-400 et seq.) of Chapter 3 of this title, in an amount equal to 20 percent of the purchase price
 14 paid during the taxable year for (i) machinery and equipment used predominantly in or on the premises
 15 of manufacturing facilities or plant units which manufacture, process, compound, or produce items of
 16 tangible personal property from recyclable materials, within the Commonwealth, for sale and (ii)
 17 *machinery and equipment used predominantly in or on the premises of facilities that are predominantly*
 18 *engaged in advanced recycling.* For purposes of determining "purchase price paid" under this section,
 19 the taxpayer may use the original total capitalized cost of such machinery and equipment, less
 20 capitalized interest. *For purposes of this section, "advanced recycling" means the operation of a*
 21 *single-stream or multi-stream recycling plant that converts waste materials into new materials for resale*
 22 *by processing them and breaking them down into their raw constituents. "Advanced recycling" includes*
 23 *the operation of a materials recovery facility or materials reclamation facility that receives, separates,*
 24 *and prepares recyclable materials for sale to end-user manufacturers.*

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

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

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

36 B. The total credit allowed under this section in any taxable year shall not exceed 40 percent of the
 37 Virginia income tax liability of such taxpayer.

38 C. Any tax credit not used for the taxable year in which the purchase price on recycling machinery
 39 and equipment was paid may be carried over for credit against the taxpayer's income taxes in the 10
 40 succeeding taxable years until the total credit amount is used.

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

51 E. In the event a corporation converts to a partnership, limited liability company, or electing small
 52 business corporation (S corporation), such business entity shall be entitled to any unused credits of the
 53 corporation. Credits earned by a partnership, limited liability company, electing small business
 54 corporation (S corporation), or a predecessor corporation entitled to such credits, shall be allocated to the
 55 individual partners, members, or shareholders, respectively, in proportion to their ownership or interest
 56 in such business entities.

57 **§ 58.1-609.3. Commercial and industrial exemptions.**

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

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

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

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

86 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in
87 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying
88 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states
89 of the United States or its territories or possessions, or in foreign commerce between ports in the
90 Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or
91 tangible personal property used directly in the building, conversion or repair of the ships or vessels
92 covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant
93 vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used
94 exclusively or principally in interstate or foreign commerce.

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

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

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

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

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

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

111 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
112 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
113 photocopying of products for sale or resale.

114 12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies,
115 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,
116 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of
117 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as

118 defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall
 119 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a
 120 usable condition consistent with commercial practices, and the gathering and transportation of raw
 121 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and
 122 equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their
 123 use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or
 124 in well area reclamation activities required by state or federal law.

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

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

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

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

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

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

154 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers
 155 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter
 156 ending November 2007, for the processing, storage, retrieval, or communication of data, including but
 157 not limited to servers, routers, connections, and other enabling hardware when part of a new investment
 158 of at least \$75 million in such exempt property, when such investment results in the creation of at least
 159 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such
 160 investment was made in accordance with a memorandum of understanding with the Virginia Economic
 161 Development Partnership Authority entered into or amended between January 1, 2008, and December
 162 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to
 163 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The
 164 exemption shall not apply to any computer software sold separately from the computer equipment, nor
 165 shall it apply to general building improvements or fixtures.

166 18. Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software
 167 purchased or leased for the processing, storage, retrieval, or communication of data, including but not
 168 limited to servers, routers, connections, and other enabling hardware, including chillers and backup
 169 generators used or to be used in the operation of the equipment exempted in this paragraph, provided
 170 that such computer equipment or enabling software is purchased or leased for use in a data center that
 171 (i) is located in a Virginia locality, (ii) results in a new capital investment on or after January 1, 2009,
 172 of at least \$150 million, and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs
 173 by the data center operator and the tenants of the data center, collectively, associated with the operation
 174 or maintenance of the data center provided that such jobs pay at least one and one-half times the
 175 prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 25 new
 176 jobs if the data center is located in a locality that has an unemployment rate for the preceding year of at
 177 least 150 percent of the average statewide unemployment rate for such year as determined by the
 178 Virginia Economic Development Partnership or is located in an enterprise zone. This exemption applies

179 to the data center operator and the tenants of the data center if they collectively meet the requirements
 180 listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption,
 181 including a data center operator on behalf of itself and its tenants, must enter into a memorandum of
 182 understanding with the Virginia Economic Development Partnership Authority that at a minimum
 183 provides the details for determining the amount of capital investment made and the number of new jobs
 184 created, the timeline for achieving the capital investment and new job goals, the repayment obligations
 185 should those goals not be achieved, and any conditions under which repayment by the qualifying data
 186 center or data center tenant claiming the exemption may be required. In addition, the exemption shall
 187 apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement,
 188 or replace computer equipment or enabling software purchased or leased in the initial investment. The
 189 exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title
 190 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building
 191 improvements or other fixtures.

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

198 20. *If the preponderance of their use is in advanced recycling, as defined in § 58.1-439.7, (i)*
 199 *machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy,*
 200 *or supplies; (ii) materials for processing, manufacturing, or conversion for resale where such materials*
 201 *either are recycled or recovered; and (iii) materials, including containers, labels, sacks, cans, boxes,*
 202 *drums, or bags used for packaging recycled or recovered material for shipment or resale.*

203 **§ 58.1-3507. Certain machinery and tools segregated for local taxation only; notice prior to**
 204 **change in valuation, hearing.**

205 A. Machinery and tools, except idle machinery and tools as defined in subsection D and machinery
 206 and equipment used by farm wineries as defined in § 4.1-100, used in a manufacturing, mining, water
 207 well drilling, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry
 208 business, *or a business primarily engaged in advanced recycling, as defined in § 58.1-439.7*, shall be
 209 listed and are hereby segregated as a class of tangible personal property separate from all other classes
 210 of property and shall be subject to local taxation only. The rate of tax imposed by a county, city, or
 211 town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible
 212 personal property. Idle machinery and tools are taxable as capital under § 58.1-1101.

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

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

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

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

234 E. In the event that any machinery and tools taken out of use subsequent to January 1, 2007, are
 235 returned to use after having been previously classified as idle machinery and tools pursuant to clause (i)
 236 (b) of subsection D, the taxpayer shall identify such machinery and tools to the commissioner of the
 237 revenue or other assessing official in writing on or before the next return due date without extension,
 238 and such machinery and tools shall be subject to tax in accordance with the procedures provided in
 239 § 58.1-3903 in the same manner as if such machinery and tools had been in use on the tax day of the

240 year in which such return to use occurs. Any interest otherwise payable pursuant to applicable law or
241 ordinance shall apply to taxes imposed pursuant to this subsection and paid after the due date, without
242 regard to the fault of the taxpayer or lack thereof. Notwithstanding the provisions of § 58.1-3903, if the
243 taxpayer has provided timely written notice of return to use in accordance with the provisions of this
244 subsection, no penalty shall be levied with respect to any tax liability arising as a result of the return to
245 use of machinery and tools classified as idle and actually idle prior to such return to use.

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

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

258 **2. That the provisions of this act amending § 58.1-439.7 of the Code of Virginia shall apply to**
259 **taxable years beginning on and after January 1, 2020, and that the provisions of this act amending**
260 **§ 58.1-3507 of the Code of Virginia shall apply to taxable years beginning on and after January 1,**
261 **2021.**