

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 49

An Act to amend and reenact §§ 58.1-2600, 58.1-2628, 58.1-2636, and 58.1-3660, relating to tax exemptions for energy storage systems.

[H 2006]

Approved March 11, 2021

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2600, 58.1-2628, 58.1-2636, and 58.1-3660 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2600. Definitions.

A. As used in this chapter:

"Certificated motor vehicle carrier" means a common carrier by motor vehicle, as defined in § 46.2-2000, operating over regular routes under a certificate of public convenience and necessity issued by the Commission or issued on or after July 1, 1995, by the Department of Motor Vehicles. A transit company or bus company that is owned or operated directly or indirectly by a political subdivision of this Commonwealth shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, nor shall such transit company or bus company thereby be subject to the imposition of local property levies. A common carrier of property by motor vehicle shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, but shall be subject to the imposition of local property taxes.

"Cogenerator" means a qualifying cogenerator or qualifying small power producer within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Commission" means the State Corporation Commission which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency responsible for the assessment of the real and personal property of all public service corporations, except those public service corporations for which the Department of Taxation is so designated, upon which the Commonwealth levies a license tax measured by the gross receipts of such corporations. The State Corporation Commission shall also assess the property of each telephone or telegraph company, every public service corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity, and each electric supplier, as provided by this chapter.

"Department" means the Department of Taxation which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency to assess the real and personal property of railroads and pipeline transmission companies as defined herein.

"Electric supplier" means any person owning or operating facilities for the generation, *storage*, transmission or distribution of electricity for sales, except any person owning or operating facilities with a designed generation *or storage* capacity of ~~twenty-five~~ 25 megawatts or less.

"Energy storage system" means the same as that term is defined in § 58.1-3660.

"Estimated tax" means the amount of tax which a taxpayer estimates as being imposed by Article 2 (§ 58.1-2620 et seq.) of this chapter for the tax year as measured by the gross receipts received in the taxable year.

"Freight car company" includes every car trust, mercantile or other company or person not domiciled in this Commonwealth owning stock cars, furniture cars, fruit cars, tank cars or other similar cars. Such term shall not include a company operating a line as a railroad.

"Gross receipts" means the total of all revenue derived in the Commonwealth, including but not limited to income from the provision or performance of a service or the performance of incidental operations not necessarily associated with the particular service performed, without deductions for expenses or other adjustments. Such term shall not, however, include interest, dividends, investment income or receipts from the sale of real property or other assets except inventory of goods held for sale or resale.

"Pipeline distribution company" means a corporation, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or by-products thereof to a purchaser for purposes of furnishing heat or light.

"Pipeline transmission company" means a corporation authorized to transmit natural gas, manufactured gas or crude petroleum and the products or by-products thereof in the public service by means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

"Storage" means the storage of energy by an energy storage system.

"Tax Commissioner" means the chief executive officer of the Department of Taxation or his designee.

"Tax year" means the twelve-month period beginning on January 1 and ending on December 31 of the same calendar year, such year also being the tax assessment year or the year in which the tax levied under this chapter shall be paid.

"Taxable year" means the calendar year preceding the tax year, upon which the gross receipts are computed as a basis for the payment of the tax levied pursuant to this chapter.

"Telegraph company" means a corporation or person operating the apparatus necessary to communicate by telegraph.

"Telephone company" means a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a person authorized by the Federal Communications Commission to provide commercial mobile service as defined in § 332(d) (1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service. The term "affiliated group" has the meaning given in § 58.1-3700.1.

B. For purposes of this chapter the terms "license tax" and "franchise tax" shall be synonymous.

§ 58.1-2628. Annual report.

A. Each telegraph company and telephone company shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, owned, operated or used by it, except leased automobiles, leased trucks or leased real estate, as of January 1 preceding, showing particularly the county, city, town or magisterial district wherein such property is located.

The report shall also show the total gross receipts for the 12 months ending December 31 next preceding and the interstate revenue, if any, attributable to the Commonwealth. Such revenue shall include all interstate revenue from business originating and terminating within the Commonwealth and a proportion of interstate revenue from all interstate business passing through, into or out of the Commonwealth.

B. Every corporation doing in the Commonwealth the business of furnishing water, heat, light and power, whether by means of gas or steam, except (i) pipeline transmission companies taxed pursuant to § 58.1-2627.1 or (ii) an electric supplier as defined in § 58.1-400.2, shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to it as of January 1 preceding, showing particularly, as to property owned by it, the county, city, town or magisterial district wherein such property is located. The report shall also show the total gross receipts for the 12 months ending December 31 next preceding.

C. Every corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to such corporation, leased by such corporation for a term greater than one year, or operated by such corporation as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located, unless reported to the Commission by another corporation or electric supplier in the Commonwealth in the business of furnishing heat, light and power by means of electricity. Real and tangible personal property of every description in the Commonwealth leased by such corporation for a term greater than one year or operated by such corporation shall mean only those assets directly associated with production facilities and shall not mean real estate or vehicles. The report shall also show the total gross receipts less sales to federal, state and local governments for their own use. Electric suppliers organized as cooperatives shall report annually their gross receipts received from nonmembers.

D. Every electric supplier as defined in § 58.1-2600 shall report annually, on April 15, to the Commission all real and tangible personal property owned by such electric supplier, leased by such electric supplier for a term greater than one year, or operated by such electric supplier in the Commonwealth and used directly for the generation, *storage*, transmission, or distribution of electricity for sale as of the preceding January 1, showing particularly the county, city, town, or magisterial district in which such property is located, unless reported to the Commission by another corporation or electric supplier in the Commonwealth in the business of furnishing heat, light, and power by means of electricity. Real and tangible personal property of every description in the Commonwealth leased by such electric supplier for a term greater than one year or operated by such electric supplier shall mean only those assets directly associated with production facilities and shall not mean real estate or vehicles. The report shall also show the total gross receipts less sales to federal, state, and local governments for their own use. Electric suppliers organized as cooperatives shall report annually their gross receipts received from nonmembers.

E. Every pipeline transmission company shall report annually, on April 15, to the Department all of its real and tangible personal property of every description as of the beginning of January 1 preceding,

showing particularly in what city, town or county and magisterial district therein the property is located.

F. The report required by subsections A through E shall be completed on forms prepared and furnished by the Commission. The Commission shall include on such forms such information as the Commission deems necessary for the proper administration of this chapter.

G. The report required by this section shall be certified by the oath of the president or other designated official of the corporation or person.

§ 58.1-2636. Revenue share for solar energy projects and energy storage systems.

A. 1. Any locality may by ordinance assess a revenue share of (i) up to \$1,400 per megawatt, as measured in alternating current (AC) generation capacity of the nameplate capacity of the facility based on submissions by the facility owner to the interconnecting utility, on any solar photovoltaic (electric energy) project, or (ii) up to \$1,400 per megawatt, as measured in alternating current (AC) storage capacity, on any energy storage system.

2. *Except as prohibited by subdivision 3, the maximum amount of the revenue share that may be imposed shall be increased on July 1, 2026, and every five years thereafter by 10 percent.*

3. *The provisions of subdivision 2 shall not apply to solar photovoltaic projects or energy storage systems for which an application has been filed with the locality, as defined by subsection D of § 58.1-3660, and such application has been approved by the locality prior to January 1, 2021. The provisions of subdivision 2 shall apply to all such projects and systems for which an application is approved by the locality on or after January 1, 2021.*

B. For purposes of this section, "solar photovoltaic (electric energy) project" shall not include any project that is (i) described in § 56-594, 56-594.01, or 56-594.2 or Chapters 358 and 382 of the Acts of Assembly of 2013, as amended; (ii) 20 megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or before December 31, 2018; or (iii) five megawatts or less.

§ 58.1-3660. Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. Certified pollution control equipment and facilities shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia.

B. As used in this section:

"Certified pollution control equipment and facilities" means any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination, except that in the case of equipment, facilities, devices, or other property intended for use by any political subdivision in conjunction with the operation of its water, wastewater, stormwater, or solid waste management facilities or systems, including property that may be financed pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1, the state certifying authority having jurisdiction with respect to such property shall, upon the request of the political subdivision, make such certification prospectively for property to be constructed, reconstructed, erected, or acquired for such purposes. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority. Such property shall also include solar energy equipment, facilities, or devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy whether or not such property has been certified to the Department of Taxation by a state certifying authority. *Such property shall also include energy storage systems, whether or not such property has been certified to the Department of Taxation by a state certifying authority.* All such property as described in this definition shall not include the land on which such equipment or facilities are located.

"Energy storage system" means equipment, facilities, or devices that are capable of absorbing energy, storing it for a period of time, and redelivering that energy after it has been stored.

"State certifying authority" means the State Water Control Board or the Virginia Department of Health, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for solar energy projects, *energy storage systems*, and for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the Virginia Waste Management Board, for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

C. For solar photovoltaic (electric energy) systems, this exemption applies only to (i) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or before December 31, 2018; (ii) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, that serve any of the public institutions of higher education listed in § 23.1-100 or any private college as defined in § 23.1-105; (iii) 80 percent of the assessed value of projects for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization (a) between January 1, 2015, and June 30, 2018, for projects greater than 20 megawatts or (b) on or after July 1, 2018, for projects greater than 20 megawatts and less than 150 megawatts, as measured in alternating current (AC) generation capacity, and that are first in service on or after January 1, 2017; (iv) projects equaling five megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019; and (v) 80 percent of the assessed value of all other projects equaling more than five megawatts and less than 150 megawatts, as measured in alternating current (AC) generation capacity for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019.

D. The exemption for solar photovoltaic (electric energy) projects greater than five megawatts, as measured in alternating current (AC) generation capacity, shall not apply to any such project unless an application has been filed with the locality for the project before July 1, 2030, regardless of whether a locality assesses a revenue share on such project pursuant to the provisions of § 58.1-2636. If a locality adopts an energy revenue share ordinance under § 58.1-2636, the exemption for solar photovoltaic (electric energy) projects greater than five megawatts, as measured in alternating current (AC) generation capacity, shall be 100 percent of the assessed value. If a locality does not adopt an energy revenue share ordinance under § 58.1-2636, the exemption for solar photovoltaic (electric energy) projects greater than five megawatts, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization, shall be 80 percent of the assessed value when an application has been filed with the locality prior to July 1, 2030. For purposes of this subsection, "application has been filed with the locality" means an applicant has filed an application for a zoning confirmation from the locality for a by-right use or an application for land use approval under the locality's zoning ordinance to include an application for a conditional use permit, special use permit, special exception, or other application as set out in the locality's zoning ordinance.

E. For pollution control equipment and facilities certified by the Virginia Department of Health, this exemption applies only to onsite sewage systems that serve 10 or more households, use nitrogen-reducing processes and technology, and are constructed, wholly or partially, with public funds.

F. Notwithstanding any provision to the contrary, for any solar photovoltaic project described in clauses (iii) and (v) of subsection C for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019, the amount of the exemption shall be as follows: 80 percent of the assessed value in the first five years in service after commencement of commercial operation, 70 percent of the assessed value in the second five years in service, and 60 percent of the assessed value for all remaining years in service.

G. Notwithstanding any provision to the contrary, the exemption for energy storage systems provided under this section (i) shall apply only to projects greater than five megawatts and less than 150 megawatts, as measured in alternating current (AC) storage capacity, and (ii) shall be in the following amounts: 80 percent of the assessed value in the first five years of service after commencement of commercial operation, 70 percent of the assessed value in the second five years in service, and 60 percent of the assessed value for all remaining years in service.

H. The exemption for energy storage systems greater than five megawatts, as measured in alternating current (AC) storage capacity, shall not apply to any such project unless an application has been filed with the locality for the project before July 1, 2030, regardless of whether a locality assesses a revenue share on such project pursuant to the provisions of § 58.1-2636. If a locality adopts an energy revenue share ordinance under § 58.1-2636, the exemption for energy storage systems greater than five megawatts, as measured in alternating current (AC) storage capacity, shall be 100 percent of the assessed value. If a locality does not adopt an energy revenue share ordinance under § 58.1-2636, the exemption for energy storage systems greater than five megawatts, as measured in alternating current (AC) storage capacity, shall be as set out in subsection G when an application has been filed with the locality prior to July 1, 2030. For the purposes of this subsection, "application has been filed with the locality" means an applicant has filed an application for a zoning confirmation from the locality for a by-right use or an application for land use approval under the locality's zoning ordinance to include an application for a conditional use permit, special use permit, special exception, or other application as set out in the locality's zoning ordinance.