

2021 SPECIAL SESSION I

INTRODUCED

21101104D

HOUSE BILL NO. 2006

Offered January 13, 2021

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A *BILL to amend and reenact §§ 58.1-609.3 and 58.1-2636 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-3660.2, relating to tax exemptions for energy storage systems.*

Patrons—Heretick, Coyner, Kory and Tyler; Senator: Surovell

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.3 and 58.1-2636 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-3660.2 as follows:

§ 58.1-609.3. Commercial and industrial exemptions.

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

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

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

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

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

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

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

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

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

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

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

68 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
69 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
70 photocopying of products for sale or resale.

71 12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies,
72 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,
73 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of
74 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as
75 defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," and "processing" shall
76 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a
77 usable condition consistent with commercial practices, and the gathering and transportation of raw
78 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and
79 equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their
80 use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or
81 in well area reclamation activities required by state or federal law.

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

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

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

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

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

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

111 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers
112 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter
113 ending November 2007, for the processing, storage, retrieval, or communication of data, including but
114 not limited to servers, routers, connections, and other enabling hardware when part of a new investment
115 of at least \$75 million in such exempt property, when such investment results in the creation of at least
116 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such
117 investment was made in accordance with a memorandum of understanding with the Virginia Economic
118 Development Partnership Authority entered into or amended between January 1, 2008, and December
119 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to
120 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. (Effective until July 1, 2021) 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.

19. (Effective July 1, 2021) If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to subdivision 3 or 4 of § 4.1-206.1, (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, as defined in § 58.1-439.7, (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.

21. *Energy storage systems, as defined in § 58.1-3660.2, including components that are purchased for use in such systems.*

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

A. 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. For the purposes of this section, "energy storage system" means the same as that term is defined in § 58.1-3660.2.

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.

§ 58.1-3660.2. Energy storage systems.

182 A. Energy storage systems, as defined in this section, are hereby declared to be a separate class of
183 property and shall constitute a classification for local taxation separate from other such classification of
184 real or personal property and such property. Energy storage systems shall be exempt from state and
185 local taxation pursuant to Article X, Section 6(d) of the Constitution of Virginia.

186 B. As used in this section, "energy storage system" means equipment, facilities, or devices that are
187 capable of absorbing energy, storing it for a period of time, and redelivering that energy after it has
188 been stored. "Energy storage system" shall not include the land on which such equipment, facilities, or
189 devices are located.

190 C. Except as provided in subsection D, the exemption provided pursuant to subsection A (i) shall
191 apply only to projects greater than five megawatts and less than 150 megawatts, as measured in
192 alternating current (AC) storage capacity and (ii) shall be in the following amounts: 80 percent of the
193 assessed value in the first five years of service after commencement of commercial operation, 70 percent
194 of the assessed value in the second five years in service, and 60 percent of the assessed value for all
195 remaining years in service.

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