

2021 SPECIAL SESSION I

SENATE SUBSTITUTE

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SENATE BILL NO. 1423

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Finance and Appropriations
on January 27, 2021)

(Patron Prior to Substitute—Senator McPike)

A BILL to amend and reenact § 58.1-609.3 of the Code of Virginia, relating to sales and use tax exemption for data centers.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-609.3 of the Code of Virginia is amended and reenacted 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.

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

9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any

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60 equipment that has not been certified to the Department of Taxation by a state certifying authority
61 pursuant to such section.

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

64 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
65 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
66 photocopying of products for sale or resale.

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

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

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

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

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

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

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

107 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers
108 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter
109 ending November 2007, for the processing, storage, retrieval, or communication of data, including but
110 not limited to servers, routers, connections, and other enabling hardware when part of a new investment
111 of at least \$75 million in such exempt property, when such investment results in the creation of at least
112 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such
113 investment was made in accordance with a memorandum of understanding with the Virginia Economic
114 Development Partnership Authority entered into or amended between January 1, 2008, and December
115 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to
116 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The
117 exemption shall not apply to any computer software sold separately from the computer equipment, nor
118 shall it apply to general building improvements or fixtures.

119 18. *a.* Beginning July 1, 2010, and ending June 30, 2035, computer equipment or enabling software
120 purchased or leased for the processing, storage, retrieval, or communication of data, including but not
121 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, *which includes any data center facilities located in the same locality as the data center that are under common ownership or affiliation of the data center operator*, 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 15 new jobs if the data center is located in a *distressed* 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 at the time of the execution of a memorandum of understanding with the Virginia Economic Development Partnership Authority. 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.

b. For purposes of this subdivision 18, "distressed locality" means:

1. From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year; and

2. From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

c. For so long as a data center operator is claiming an exemption pursuant to this subdivision 18, such operator shall be required to submit an annual report to the Virginia Economic Development Partnership Authority on behalf of itself and, if applicable, its participating tenants that includes their employment levels, capital investments, average annual wages, qualifying expenses, and tax benefit, and such other information as the Virginia Economic Development Partnership Authority determines is relevant, pursuant to procedures developed by the Virginia Economic Development Partnership Authority. The annual report shall be submitted by the data center operator in a format prescribed by the Virginia Economic Development Partnership Authority. The Virginia Economic Development Partnership Authority shall share all information collected with the Department.

The Department, with the assistance of the Virginia Economic Development Partnership Authority, shall publish a biennial report on the exemption that shall include aggregate information on qualifying expenses claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes direct and indirect jobs created by data center investment, state and local tax revenues generated, and any other information it deems appropriate to demonstrate the costs and benefits of the exemption. The report shall not include, and the Department and the Virginia Economic Development Partnership Authority shall not publish or disclose, any such information if it is unaggregated or if such report or publication could be used to identify a business or individual. The Department shall submit its report to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committees on Appropriations and Finance. The Department may publish on its website and distribute annual information indicating the job creation and ranges of capital investments made by a data center operator and, if applicable, its participating tenants, in a format to be developed in consultation with data center operators.

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

183 of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans,
184 bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.

185 19. (Effective July 1, 2021) If the preponderance of their use is in the manufacture of beer by a
186 brewer licensed pursuant to subdivision 3 or 4 of § 4.1-206.1, (i) machinery, tools, and equipment, or
187 repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for future
188 processing, manufacturing, or conversion into beer where such materials either enter into the production
189 of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans,
190 bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.

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

196 **2. That the provisions of this act amending subdivision 18 of § 58.1-609.3 of the Code of Virginia**
197 **to require data center operators to submit an annual report to the Virginia Economic**
198 **Development Partnership Authority shall apply to all data center operators that receive the benefit**
199 **of the exemption created by § 58.1-609.3 of the Code of Virginia, regardless of when such**
200 **operators located a new data center in the Commonwealth.**