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**HOUSE BILL NO. 116**

Offered January 10, 2024

Prefiled January 1, 2024

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

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 Patron—Sullivan
 

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 Referred to Committee on Finance
 

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**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

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59 leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile  
60 products.

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

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

66 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of  
67 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or  
68 photocopying of products for sale or resale.

69 12. From July 1, 1994, and ending July 1, 2024, raw materials, fuel, power, energy, supplies,  
70 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,  
71 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of  
72 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as  
73 defined in § 45.2-1600. For the purposes of this section, "drilling," "extraction," and "processing" shall  
74 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a  
75 usable condition consistent with commercial practices, and the gathering and transportation of raw  
76 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and  
77 equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their  
78 use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or  
79 in well area reclamation activities required by state or federal law.

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

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

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

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

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

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

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

18. a. Beginning July 1, 2010, and ending June 30, 2035, except as provided in subdivision 19, 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, 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 10 new jobs if the data center is located in a distressed locality at the time of the execution of a memorandum of understanding with the Virginia Economic Development Partnership Authority. Additionally, the requirement of a \$150 million capital investment shall be reduced to \$70 million for data centers that qualify for the reduced jobs requirement.

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. *Such memorandum of understanding shall include or, if already in effect prior to July 1, 2024, shall be amended to include the data center operator's method of demonstrating compliance with energy procurement and use requirements described in subdivision c.* 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. *Beginning July 1, 2024, any purchases or leases shall be exempt pursuant to this subdivision 18 only if the data center operator demonstrates that (i) its facilities either (a) have a power usage effectiveness score of no greater than 1.2 or (b) for data centers co-located in buildings with other commercial uses that make up more than 20 percent of the square footage of the building, achieve an energy efficiency level of no less than the most efficient 15 percent of similar buildings constructed in the previous five years and (ii) by January 1, 2027, it will procure carbon-free renewable energy and associated renewable energy certificates from facilities located within the area of the transmission grid serving Virginia equal to 90 percent of its electricity requirements, measured on an hourly basis, or that its electricity will be otherwise derived from non-carbon-emitting, renewable sources. The Virginia Economic Development Partnership Authority shall establish guidelines for calculating the power usage effectiveness (PUE) score and determining analogous buildings for comparison pursuant to clause (i). In no case shall a qualifying data center use diesel fuel for on-site power generation.*

d. 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; *demonstration of their compliance with energy procurement and use requirements*; 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

182 Economic Development Partnership Authority. The Virginia Economic Development Partnership  
183 Authority shall share all information collected with the Department.

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

198 19. a. Notwithstanding any provision of subdivision 18 to the contrary, the exemption set forth in  
199 subdivision 18 may be extended for the purchase or lease of computer equipment or enabling software  
200 by or on behalf of data center operators for use in data centers in the Commonwealth that are under  
201 common ownership or affiliation with the data center operator as set forth in this subdivision 19. For  
202 purposes of this subdivision 19, a data center operator shall be considered to own a data center if it is  
203 operated on behalf of the data center operator pursuant to a long-term lease of at least ten years.

204 b. To qualify for an extension pursuant to this subdivision 19, a data center operator shall enter into  
205 a memorandum of understanding with the Virginia Economic Development Partnership Authority on or  
206 after January 1, 2023, that at a minimum provides the details for determining the amount of capital  
207 investment made and the number of new jobs created; the locality or localities in which the capital  
208 investment shall be made and new jobs shall be created in order to qualify for the extension; and the  
209 timeline for making the capital investment and creating the new jobs in each specified locality. *Such*  
210 *memorandum of understanding shall include or, if already in effect prior to July 1, 2024, shall be*  
211 *amended to include the data center operator's method of demonstrating compliance with energy*  
212 *procurement and use requirements described in subdivision 18.* A data center operator shall only be  
213 required to enter into one memorandum of understanding pursuant to this subdivision 19 in order to  
214 qualify for the extension pursuant to both subdivisions c and d.

215 c. If on or after January 1, 2023, but before July 1, 2035, a data center operator that has entered into  
216 a memorandum of understanding pursuant to subdivision b (i) makes or causes to be made a capital  
217 investment of at least \$35 billion in data centers in localities identified in a memorandum of  
218 understanding and (ii) creates at least 1,000 new full-time jobs, as defined in § 59.1-284.41, at such data  
219 centers, of which at least 100 of such jobs shall pay at least one and one-half times the prevailing  
220 average wage in the Commonwealth, the data center operator shall be eligible to continue to utilize the  
221 exemption set forth in subdivision 18 through June 30, 2040.

222 d. If on or after January 1, 2023, but before July 1, 2040, a data center operator that has entered into  
223 a memorandum of understanding pursuant to subdivision b (i) makes a total capital investment of at  
224 least \$100 billion, inclusive of any investment made pursuant to subdivision c, in data centers in the  
225 localities identified in such memorandum of understanding and (ii) creates a total of at least 2,500 new  
226 full-time jobs, as defined in § 59.1-284.41, at such data centers, of which at least 100 of such jobs shall  
227 pay at least one and one-half times the prevailing average wage in the Commonwealth, inclusive of any  
228 new full-time jobs created pursuant to subdivision c, the data center operator shall be eligible to utilize  
229 the exemption set forth in subdivision 18 through June 30, 2050.

230 e. The extension provided in this subdivision 19 shall apply to the computer equipment or enabling  
231 software purchased or leased for use in the data centers subject to the capital investment and job  
232 requirements set forth herein, as well as to any such computer equipment or enabling software purchased  
233 or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or  
234 leased in the initial investment. The extension shall also apply to any computer equipment or software  
235 purchased or leased in data centers under common ownership or affiliation with the data center operator  
236 for which the data center operator entered into a memorandum of understanding with the Virginia  
237 Economic Development Partnership Authority to qualify for the exemption set forth in subdivision 18.

238 f. The reporting requirements *and energy efficiency requirements* set forth in subdivision 18 shall  
239 continue to apply to a data center operator for the duration of any extension granted pursuant to this  
240 subdivision 19.

241 20. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to  
242 subdivision 3 or 4 of § 4.1-206.1, (i) machinery, tools, and equipment, or repair parts therefor or  
243 replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing,

244 or conversion into beer where such materials either enter into the production of or become a component  
245 part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums,  
246 or bags for future use, for packaging the beer for shipment or sale.  
247 21. If the preponderance of their use is in advanced recycling, as defined in § 58.1-439.7, (i)  
248 machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or  
249 supplies; (ii) materials for processing, manufacturing, or conversion for resale where such materials  
250 either are recycled or recovered; and (iii) materials, including containers, labels, sacks, cans, boxes,  
251 drums, or bags used for packaging recycled or recovered material for shipment or resale.

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