

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 204

An Act to amend and reenact §§ 58.1-609.3, 58.1-1501 and 58.1-1505 of the Code of Virginia, relating to general sales and use tax exemptions and aircraft sales and use tax.

[H 1608]

Approved March 14, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.3, 58.1-1501 and 58.1-1505 of the Code of Virginia are 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, extraction, refining, or processing of oil, gas, natural gas and coalbed methane gas.

3. Tangible personal property sold or leased to (i) a public service corporation subject to a state franchise or license tax upon gross receipts, (ii) a telecommunications company as defined in § 58.1-400.1 or (iii) a telephone company chartered in the Commonwealth which is exclusively a local mutual association and is not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof, for use or consumption by such corporation, company, person or mutual association directly in the rendition of its public service; and tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by motor vehicle or 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.

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. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service, ~~as defined in § 58.1-1501,~~ 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.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption

directly in the rendition of their services.

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

12. From July 1, 1994, through June 30, 1996, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, refining, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," "refining," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

§ 58.1-1501. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Aircraft" means any contrivance used or designed for untethered navigation or flight in the air by one or more persons at an altitude greater than twenty-four inches above the ground. Such term shall not include parachutes.

"Dealer" means any person owning five or more aircraft during the calendar year who the Commissioner finds is in the regular business of selling aircraft.

"Gross receipts" means the charges made or voluntary contributions received for the hourly rental and maintenance of an aircraft, all other charges for the use of an aircraft and, unless separately stated on the invoice, all charges for services of pilots or instructors in such aircraft. The term shall also include any amount by which the price estimated under § 58.1-1503 exceeds the charge actually made.

"Retail sale" means a sale to a consumer or to any person for any purpose other than for resale. The term shall include any transaction the Commissioner, upon investigation, finds to be in lieu of a sale. Sales for resale must be made in strict compliance with any rules and regulations promulgated pursuant to this chapter.

"Sale" means any transfer of ownership or possession of an aircraft by exchange or barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession (i) made to secure payment of an obligation, or (ii) incidental to repossession under a lien and under which ownership is transferred to the reposessor, his nominee or a trustee, pending ultimate disposition or sale of the collateral, or (iii) as part of the sale of all or substantially all the assets of any business.

"Sale price" means the total price paid for an aircraft and all attachments thereon and accessories thereto, exclusive of any federal manufacturer's excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances.

"Scheduled air service" means *any scheduled service provided by a single air carrier consisting of regularly scheduled flights to one or more Virginia airports at least five days per week an air carrier or foreign air carrier operating pursuant to authority issued by the U.S. Department of Transportation and under Federal Aviation Regulations, Parts 121, 129 or 135.*

§ 58.1-1505. Exemptions.

Any aircraft sold to or used by the United States or any of the governmental agencies thereof, the Commonwealth of Virginia or any political subdivision thereof, or any ~~airline~~ *air carrier* 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 as defined in § 58.1-1501~~ shall be exempt from the tax imposed by this chapter.

2. That the provisions of this act shall be effective on and after January 1, 1994.