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SENATE BILL NO. 792

Offered January 10, 2001

Prefiled December 1, 2000

A BILL to amend and reenact §§ 58.1-609.1 and 58.1-2402 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-439.12:1, 58.1-439.12:2, and 58.1-2423.2, relating to clean and efficient energy tax incentives.

Patron—Whipple

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.1 and 58.1-2402 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 58.1-439.12:1, 58.1-439.12:2, and 58.1-2423.2, as follows:

§ 58.1-439.12:1. Tax credit for producing electricity from certain renewable sources.

A. As used in this section, unless the context clearly requires otherwise:

"Qualified energy resources" means the same as that term is defined by Internal Revenue Code § 45.

"Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy resources to produce electricity.

B. For taxable years beginning on and after January 1, 2001 but before January 1, 2010, any corporation shall be allowed a credit against the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 in an amount equal to 0.85 cents for each kilowatt of electricity produced during the taxable year (i) from qualified energy resources at a qualified Virginia facility and (ii) sold by the corporation to a person other than a related person, within the meaning of Internal Revenue Code § 45.

C. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the corporation's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the credit arose. If a corporation that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such corporation shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

D. A corporation that claims the credit pursuant to this section may not use such production of electricity as the basis for claiming any other credit or grant provided under the Code of Virginia.

§ 58.1-439.12:2. Photovoltaic and solar energy tax credit.

A. As used in this section, unless the context clearly requires otherwise:

"Photovoltaic property" means solar energy property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department of Mines, Minerals and Energy.

"Solar energy property" means equipment that uses solar energy (i) to generate electricity; (ii) to heat or cool a structure or provide hot water for use in a structure; or (iii) to provide solar process heat. Solar energy property does not include a swimming pool, hot tub, or any other storage medium that has a function other than storage.

"Solar water heating property" means solar energy property that, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within the structure and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department of Mines, Minerals and Energy.

B. For taxable years beginning on and after January 1, 2001, any individual and corporation shall be allowed a credit against the tax imposed by Article 2 (§ 58.1-320 et seq.) of Chapter 3 of Title 58.1 and Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1, respectively, for the costs of photovoltaic property and solar water heating property placed in service during the taxable year. The credit allowed under this section shall be in an amount equal to fifteen percent of the total installed cost of photovoltaic property and solar water heating property but shall not exceed an aggregate total of:

- 1. \$2,000 for each system of photovoltaic property; and*
- 2. \$1,000 for each system of solar water heating property.*

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59 C. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such
60 taxable year. Any credit not usable for the taxable year may be carried over for credit against the
61 individual's or corporation's income taxes until the earlier of (i) the full amount of the credit is used or
62 (ii) the expiration of the fifth taxable year after the taxable year in which the property is placed in
63 service. If an individual or corporation that is subject to the tax limitation imposed pursuant to this
64 subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a
65 credit carryover from a preceding taxable year, such corporation shall be considered to have first
66 utilized any credit allowed that does not have a carryover provision, and then any credit that is carried
67 forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this
68 section.

69 D. To claim the credit authorized under this section, the individual or corporation shall apply to the
70 Department of Mines, Minerals and Energy, which shall determine the amount of eligible costs and
71 issue a certificate thereof to such individual or corporation. The individual or corporation shall attach
72 the certificate to the Virginia tax return on which the credit is claimed.

73 E. An individual or corporation who claims the credit pursuant to this section may not use the costs
74 of such photovoltaic property or solar heating property as the basis for claiming any other credit or
75 grant provided under the Code of Virginia.

76 § 58.1-609.1. Governmental and commodities exemptions.

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

79 1. Fuels which are subject to the tax imposed by Chapter 22 (§ 58.1-2200 et seq.) of this title.
80 Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this
81 chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

82 2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

83 3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

84 4. Tangible personal property for use or consumption by the Commonwealth, any political
85 subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and
86 leases to privately owned financial and other privately owned corporations chartered by the United
87 States. Further, this exemption shall not apply to tangible personal property which is acquired by the
88 Commonwealth or any of its political subdivisions and then transferred to private businesses for their
89 use in a facility or real property improvement to be used by a private entity or for nongovernmental
90 purposes other than tangible personal property acquired by the Advanced Shipbuilding and Carrier
91 Integration Center and transferred to a Qualified Shipbuilder as defined in the third enactment of
92 Chapter 790 of the 1998 Acts of the General Assembly.

93 5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.) of this title.

94 6. Motor fuels and alternative fuels for use in a commercial watercraft upon which a fuel tax is
95 refunded pursuant to § 58.1-2259.

96 7. Sales by a government agency of the official flags of the United States, the Commonwealth of
97 Virginia, or of any county, city or town.

98 8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.

99 9. Watercraft as defined in § 58.1-1401.

100 10. Tangible personal property used in and about a marine terminal under the supervision of the
101 Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall
102 apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the
103 Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit
104 corporation that operates a marine terminal or terminals on behalf of the Authority.

105 11. Sales by prisoners confined in state correctional facilities of artistic products personally made by
106 the prisoners as authorized by § 53.1-46.

107 12. Tangible personal property for use or consumption by the Virginia Department for the Blind and
108 Vision Impaired or any nominee, as defined in § 63.1-142, of such Department.

109 13. From July 1, 1995, through June 30, 2000, tangible personal property for use or consumption by
110 any community diversion program or successor program as established in accordance with the provisions
111 of Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1.

112 14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at
113 a canteen operated by the Virginia Veterans Care Center Board of Trustees established pursuant to
114 § 2.1-744.1.

115 15. Tangible personal property for use or consumption by any nonprofit organization whose members
116 include the Commonwealth and other states and which is organized for the purpose of fostering
117 interstate cooperation and excellence in government.

118 16. Tangible personal property purchased for use or consumption by any soil and conservation
119 district which is organized in accordance with the provisions of Article 3 (§10.1-506 et seq.) of Chapter
120 5 of Title 10.1.

17. *Energy efficient appliances and commodities as provided in this subdivision:*
a. Clothes washers, room air conditioners, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection agency and the United States Department of Energy;

b. A fuel cell that (i) generates electricity and heat using an electrochemical process; (ii) has an electricity-only generation efficiency greater than thirty-five percent; and (iii) has a generating capacity of at least two kilowatts;

c. A natural gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling;

d. An electric heat pump hot water heater that yields an energy factor of at least 1.7;

e. An electric heat pump that has a heating system performance factor of at least 7.5 and a cooling seasonal energy efficiency ratio of at least 13.5;

f. A central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; and

g. An advanced natural gas water heater that has an energy factor of at least 0.65.

§ 58.1-2402. Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than (i) vehicles with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, or (ii) a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

There shall also be levied a tax upon the rental of a motor vehicle in Virginia, without regard to whether such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be levied upon a rental to a person for re-rental as an established business or part of an established business, or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price or gross proceeds:

1. Three percent of the sale price of each motor vehicle sold in Virginia. *If such vehicle is manufactured, converted, or retrofitted to use clean special fuels, as defined in § 58.1-2101, as a source of propulsion, the tax shall be one and one-half percent of the sale price of each motor vehicle sold in Virginia; if such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such manufactured home sold in this Commonwealth; if such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in this Commonwealth.*

2. Three percent of the sale price of each motor vehicle *or one and one-half percent of the sale price of such motor vehicle if the motor vehicle is manufactured, converted, or retrofitted to use clean special fuels, as defined in § 58.1-2101, as a source of propulsion,* or three percent of the sale price of each manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in this Commonwealth. When any such motor vehicle or manufactured home is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

3. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle, except those with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.

4. In addition to the tax levied pursuant to subdivision A 3, a tax of four percent of the gross proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required to be licensed in the Commonwealth.

5. The minimum tax levied on the sale of any motor vehicle in the Commonwealth shall be thirty-five dollars, except as provided by those exemptions defined in § 58.1-2403.

For purposes of applying the reduced tax rate on motor vehicles as provided in subdivisions 1 and 2, a hybrid gasoline/electric powered motor vehicle shall be deemed to use clean special fuels as a source of propulsion.

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision. A motor vehicle subject to the tax imposed under subdivision A 3 shall be subject to the tax under either subdivision A 1 or A 2 when it ceases to be used for rental as an established business or part of an established business, or incidental or germane to such business.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no longer owned, rented or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof. Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such

182 vehicle is subsequently licensed to operate on the highways of this Commonwealth.

183 D. Any person who with intent to evade or to aid another person to evade the tax provided for
184 herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for
185 title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this
186 title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

187 E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged
188 by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to
189 subdivision 10 of § 46.2-1530, shall be subject to the tax.

190 § 58.1-2423.2. *Refund for vehicles using clean special fuels.*

191 *If a motor vehicle is converted or retrofitted to use clean special fuels, as defined in § 58.1-2101,*
192 *within six months after the date of titling in the Commonwealth, the vehicle owner shall be entitled to a*
193 *refund of one-half of the motor vehicle sales and use tax paid at the time of titling.*

194 *The claim for refund shall be in such form as the Commissioner shall prescribe and shall include*
195 *documentation to verify that conversion of the motor vehicle took place within six months after the date*
196 *of titling in the Commonwealth. It shall be filed with the Commissioner within twelve months from the*
197 *date of payment of the tax.*

198 *For purposes of this section, a hybrid gasoline/electric powered motor vehicle shall be deemed to use*
199 *clean special fuels.*

200 **2. That the Tax Commissioner and the Commissioner of the Department of Motor Vehicles shall**
201 **promulgate regulations, in consultation with the Department of Mines, Minerals and Energy as**
202 **needed, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), for purposes of**
203 **carrying out the provisions of this Act.**

204 **3. That the Tax Commissioner, the Commissioner of the Department of Motor Vehicles, and the**
205 **Director of the Department of Mines, Minerals and Energy, in consultation with manufacturers,**
206 **retailers, local government officials and other interested groups, shall develop voluntary labeling**
207 **and public information materials to identify products eligible for the tax incentives provided under**
208 **this Act.**