

2004 SPECIAL SESSION I

ENGROSSED

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SENATE BILL NO. 5003

Senate Amendments in [] — March 24, 2004

A BILL to amend and reenact §§ 58.1-609.3 and 58.1-611.1 of the Code of Virginia, relating to certain sales and use tax exemptions and reductions, and appropriating the resulting additional revenue.

Patron Prior to Engrossment—Senator Quayle

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.3 and 58.1-611.1 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. *In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used in the generation of electric power, except for raw materials that are inputs to production of electricity.*

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. 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. 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.

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

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

64 9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any
65 equipment that has not been certified to the Department of Taxation by a state certifying authority
66 pursuant to such section and (ii) effective retroactive to July 1, 1994, and ending July 1, 2006, certified
67 pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such
68 section, have been certified by the Department of Mines, Minerals and Energy for coal, oil and gas
69 production, including gas, natural gas, and coalbed methane gas.

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

72 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
73 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
74 photocopying of products for sale or resale.

75 12. From July 1, 1994, and ending July 1, 2006, raw materials, fuel, power, energy, supplies,
76 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,
77 extraction, refining, or processing of natural gas or oil and the reclamation of the well area. For the
78 purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane
79 gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," "refining," and
80 "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw
81 natural gas into a usable condition consistent with commercial practices, and the gathering and
82 transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition.
83 Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the
84 preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or
85 oil for sale or resale, or in well area reclamation activities required by state or federal law.

86 13. Beginning July 1, 1997, and ending July 1, 2011, (i) the sale, lease, use, storage, consumption, or
87 distribution of an orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or
88 space station of any kind possessing space flight capability, including the components thereof,
89 irrespective of whether such facility, system, vehicle, satellite, or station is returned to this
90 Commonwealth for subsequent use, storage or consumption in any manner when used to conduct
91 spaceport activities; (ii) the sale, lease, use, storage, consumption or distribution of tangible personal
92 property placed on or used aboard any orbital or suborbital space facility, space propulsion system,
93 space vehicle, satellite or space station of any kind, irrespective of whether such tangible personal
94 property is returned to this Commonwealth for subsequent use, storage or consumption in any manner
95 when used to conduct spaceport activities; (iii) fuels of such quality not adapted for use in ordinary
96 vehicles, being produced for, sold and exclusively used for space flight when used to conduct spaceport
97 activities; (iv) the sale, lease, use, storage, consumption or distribution of machinery and equipment
98 purchased, sold, leased, rented or used exclusively for spaceport activities and the sale of goods and
99 services provided to operate and maintain launch facilities, launch equipment, payload processing
100 facilities and payload processing equipment used to conduct spaceport activities.

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

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

107 § 58.1-611.1. Rate of tax on sales of food purchased for human consumption; Food Tax Reduction
108 Program.

109 A. Subject to the conditions of subsections D and E, the tax imposed by §§ 58.1-603 and 58.1-604
110 on food purchased for human consumption shall be levied and distributed as follows:

111 1. From January 1, 2000, through ~~March 31, 2004~~ *June 30, 2004*, the tax rate on such food shall be
112 three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the
113 revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
114 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
115 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half
116 percent shall be used for general fund purposes.

117 2. From ~~April 1, 2001, through March 31, 2002~~ *Beginning July 1, 2004*, the tax rate on such food
118 shall be two and one-half percent of the gross sales price. The revenue from the tax shall be distributed
119 as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in
120 subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed

as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one percent shall be used for general fund purposes.

3. From April 1, 2002, through March 31, 2003, the tax rate on such food shall be two percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one-half percent shall be used for general fund purposes.

4. On and after April 1, 2003, the tax rate on such food shall be one and one-half percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and D of § 58.1-638.

B. The provisions of this section shall not affect the imposition of tax on food purchased for human consumption pursuant to §§ 58.1-605 and 58.1-606.

C3. As used in this section, "food purchased for human consumption" has the same meaning as "food" defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which produce food for human consumption. For the purpose of this section, "food purchased for human consumption" shall not include food sold by any retail establishment where the gross receipts derived from the sale of food prepared by such retail establishment for immediate consumption on or off the premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that retail establishment, including but not limited to motor fuel purchases, regardless of whether such prepared food is consumed on the premises of that retail establishment. For purposes of this section, "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is required to apply for and receive a certificate of registration pursuant to § 58.1-613.

D. Notwithstanding the tax rates set forth in subsection A, the rate of tax on sales of food purchased for human consumption for any 12-month period beginning on or after April 1, 2001, shall not be reduced below the rate then in effect for the Commonwealth's current fiscal year if:

1. Actual general fund revenues for the fiscal year preceding a fiscal year in which a rate reduction is contemplated in subsection A do not exceed the official general fund revenue estimates for such preceding fiscal year, as estimated in the most recently enacted and approved general appropriation act, by at least one percent; or

2. Any of the events listed in subsection C of § 58.1-3524 or subsection B of § 58.1-3536 have occurred during the then current fiscal year.

E. If the tax rate on food purchased for human consumption remains the same for the period January 1, 2000, through March 31, 2001, and the subsequent 12-month period beginning on April 1, 2001, or with respect to any consecutive 12-month periods beginning on and after April 1, 2001, the tax rate on such food shall remain the same unless none of the conditions described in subsection D have occurred, in which event the tax rate on food purchased for human consumption for the immediately following 12-month period shall be equal to the next lowest tax rate listed in subsection A.

2. That the total additional amount of state sales and use tax revenue generated by the amendments in this act to § 58.1-609.3, except for the amount distributed to localities pursuant to § 58.1-638 of the Code of Virginia, shall be appropriated pursuant to the provisions of this act.

3. That in addition to the sales and use tax reduction provided in subdivision A 2 of § 58.1-611.1, there shall be an additional one percent reduction in sales and use tax on food for human consumption provided in the general appropriation act as passed by the 2004 Special Session of the General Assembly.

4. That notwithstanding any provision of law to the contrary, any public utility that is subject to a sales and use tax on tangible personal property purchased or leased for use or consumption by such utility in the rendition of its service as a public utility, is hereby authorized to recover from each customer that customer's pro rata share of the public utility's actual expense therefor by means of a sales and use tax surcharge to recover any sales and use tax expenditures that are incurred as a result of the elimination of the public utility's exemption from taxation pursuant to § 58.1-609.3. In determining the amount of surcharge and in imposing the same, [the public utility is not neither the public utility nor the Commission is] required to initiate a rate case hearing. However, the amount of the surcharge shall be verified by the State Corporation Commission in the year subsequent to the surcharge. If the State Corporation Commission determines that the amount of the surcharge exceeded the actual sales and use tax incurred as a result of the amendments to § 58.1-609.3, a surcharge adjustment shall be applied in the following year to return the overcharge to customers.

182 5. That out of the additional general fund revenues resulting from the amendments in this act to
183 § 58.1-609.3, after paying the cost of exempting one-half percent of the sales and use tax on food
184 for human consumption as provided in subdivision A 2 of § 58.1-611.1, there shall be paid 20
185 percent of the following amounts, which shall be set out in the general appropriation act for the
186 2004-2006 biennium:

187 a. State Police Officers' Compensation: \$5,628,521 for FY 2005 and \$5,628,521 for FY 2006 shall
188 be provided to increase the base salaries of sworn state police officers by 6.42 percent on July 1,
189 2004.

190 b. State Police Officers' Salary Compression: \$4,538,250 for FY 2005 and \$4,538,250 for FY 2006
191 shall be provided to address salary issues among sworn state police officers.

192 c. Sheriffs' and Deputy Sheriffs' Compensation: \$18,552,158 for FY 2005 and \$18,552,158 for FY
193 2006 shall be provided to increase the base salaries of sheriffs and deputy sheriffs by 6.42 percent
194 on July 1, 2004.

195 d. Local and Regional Jail Per Diem Payments: \$13,200,000 for FY 2005 and \$13,200,000 for FY
196 2006 shall be provided to restore previous reductions in the Commonwealth's share of per diem
197 payments for the maintenance of prisoners in local and regional jails as required by Article 3
198 (§ 53.1-80 et seq.) of Chapter 3 of Title 53.1 of the Code of Virginia.

199 e. Financial Assistance to Local Attorneys for the Commonwealth: \$5,099,197 for FY 2005 and
200 \$5,099,197 for FY 2006 shall be provided to restore previous reductions in the appropriations to
201 Commonwealth Attorney offices.

202 Appropriations of the remaining 80 percent of the foregoing amounts shall be provided in the
203 general appropriation act of the 2004 Special Session of the General Assembly.