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SENATE BILL NO. 260

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 58.1-602, 58.1-609.3, 58.1-3503, 58.1-3507, and 58.1-3660 of the Code of Virginia, relating to the taxation of property utilized in manufacturing; sales and use tax exemptions and the classification and assessment of property.

Patrons—Wagner and Williams; Delegates: Abbitt, Marshall, D.W., Nixon, Purkey and Saxman

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-602, 58.1-609.3, 58.1-3503, 58.1-3507, and 58.1-3660 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-602. Definitions.

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

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process" means all necessary or essential steps of an integrated processing, manufacturing, refining, recycling, or conversion process. A step in the integrated process is necessary or essential if there would be an adverse effect on product quality or production yields if the step were

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59 *not performed. The integrated process includes materials and supplies required to calibrate, test, or*
60 *otherwise prepare a piece of manufacturing equipment for its use in a given manufacturing, refining,*
61 *recycling, or conversion process. The integrated process also includes those items required to maintain*
62 *the controlled environment required to perform the processing step. When used in relation to mining, it*
63 *will refer to the activities specified above, and in addition, any reclamation activity of the land*
64 *previously mined by the mining company required by state or federal law.*

65 "Internet" means collectively, the myriad of computer and telecommunications facilities, which
66 comprise the interconnected world-wide network of computer networks.

67 "Internet service" means a service that enables users to access proprietary and other content,
68 information electronic mail, and the Internet as part of a package of services sold to end-user
69 subscribers.

70 "Lease or rental" means the leasing or renting of tangible personal property and the possession or use
71 thereof by the lessee or renter for a consideration, without transfer of the title to such property.

72 "*Machinery, tools and equipment*" includes all supports, bases, foundations, or other accessories
73 *required for the proper operation of the machinery, tools and equipment and its use in the integrated*
74 *process, without regard to its proximity to the manufacturing process, or the manner of attachment to*
75 *the equipment or whether the support, base, foundation, or other accessory is affixed or attached to*
76 *realty.*

77 "Manufacturing, processing, refining, *recycling*, or conversion" includes *activities conducted at the*
78 *production line of the plant site* starting with the *unloading*, handling, ~~and~~ or storage of raw materials at
79 ~~the plant site~~ and continuing through the last step of production where the product is finished or
80 completed for sale ~~and conveyed to a warehouse, including conveyance and placement into final storage~~
81 ~~at the production plant site; and.~~ The term also includes equipment and supplies used for ~~production line~~
82 ~~testing and~~ quality control ~~or testing of product or industrial materials regardless of where the testing~~
83 ~~actually takes place or whether the equipment automatically adjusts the machinery, tools and equipment~~
84 ~~used in the integrated process, or comes into contact with the product.~~ The term "manufacturing" shall
85 also include the necessary ancillary activities of newspaper and magazine printing when such activities
86 are performed by the publisher of any newspaper or magazine for sale daily or regularly at average
87 intervals not exceeding three months.

88 The determination whether any manufacturing, mining, processing, refining or conversion activity is
89 industrial in nature shall be made without regard to plant size, existence or size of finished product
90 inventory, degree of mechanization, amount of capital investment, number of employees or other factors
91 relating principally to the size of the business. Further, "industrial in nature" shall include, but not be
92 limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the
93 Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

94 "Modular building" means, but shall not be limited to, single and multifamily houses, apartment
95 units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are
96 intended to become real property, primarily constructed at a location other than the permanent site, built
97 to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the
98 Virginia Department of Housing and Community Development, and shipped with most permanent
99 components in place to the site of final assembly. For purposes of this chapter, a modular building shall
100 not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and
101 certified under the provisions of the National Manufactured Housing Construction and Safety Standards
102 Act of 1974 (42 U.S.C. § 5401 et seq.).

103 "Modular building manufacturer" means a person or corporation who owns or operates a
104 manufacturing facility and is engaged in the fabrication, construction and assembling of building
105 supplies and materials into modular buildings, as defined in this section, at a location other than at the
106 site where the modular building will be assembled on the permanent foundation and may or may not be
107 engaged in the process of affixing the modules to the foundation at the permanent site.

108 "Modular building retailer" means any person who purchases or acquires a modular building from a
109 modular building manufacturer, or from another person, for subsequent sale to a customer residing
110 within or outside of the Commonwealth, with or without installation of the modular building to the
111 foundation at the permanent site.

112 "Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of
113 the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all
114 applicable motor vehicle sales and use taxes have been paid.

115 "Occasional sale" means a sale of tangible personal property not held or used by a seller in the
116 course of an activity for which he is required to hold a certificate of registration, including the sale or
117 exchange of all or substantially all the assets of any business and the reorganization or liquidation of
118 any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in
119 number, scope and character to constitute an activity requiring the holding of a certificate of registration.

120 "Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for

purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax.

The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; and (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price, or (iii) separately stated local property taxes collected. Where used articles are taken in trade, or in a series of trades as a credit

182 or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the
183 net difference between the sales price of the new or used articles and the credit for the used articles.

184 "Storage" means any keeping or retention of tangible personal property for use, consumption or
185 distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of
186 business.

187 "Tangible personal property" means personal property which may be seen, weighed, measured, felt,
188 or touched, or is in any other manner perceptible to the senses. The term "tangible personal property"
189 shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible
190 personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt
191 from all other state and local utility taxes, and (ii) manufactured signs.

192 "Use" means the exercise of any right or power over tangible personal property incident to the
193 ownership thereof, except that it does not include the sale at retail of that property in the regular course
194 of business. The term does not include the exercise of any right or power, including use, distribution, or
195 storage, over any tangible personal property sold to a nonresident donor for delivery outside of the
196 Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the
197 Commonwealth via mail or telephone. The term does not include any sale determined to be a gift
198 transaction, subject to tax under § 58.1-604.6.

199 "Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein
200 defined.

201 ~~"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to~~
202 ~~those activities which are an integral part of the production of a product, including all steps of an~~
203 ~~integrated manufacturing or mining process, but not including ancillary activities such as general~~
204 ~~maintenance or administration. When used in relation to mining, it shall refer to the activities specified~~
205 ~~above, and in addition, any reclamation activity of the land previously mined by the mining company~~
206 ~~required by state or federal law.~~

207 "Video programmer" means a person or entity who provides video programming to end-user
208 subscribers.

209 "Video programming" means video and/or information programming provided by or generally
210 considered comparable to programming provided by a cable operator including, but not limited to,
211 Internet service.

212 § 58.1-609.3. Commercial and industrial exemptions.

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

215 1. Personal property purchased by a contractor which is used solely in another state or in a foreign
216 country, which could be purchased by such contractor for such use free from sales tax in such other
217 state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or
218 country.

219 2. (i) Industrial materials for future processing, manufacturing, refining, *recycling*, or conversion into
220 articles of tangible personal property for resale where such industrial materials either enter into the
221 production of or become a component part of the finished product; (ii) industrial materials that are
222 coated upon or impregnated into the product at any stage of its being processed, manufactured, refined,
223 *recycled*, or converted for resale; (iii) machinery ~~or~~ tools *and equipment*, or repair parts therefor or
224 replacements thereof, fuel, power, energy, or supplies, used ~~directly in the integrated process of~~
225 processing, manufacturing, refining, *recycling*, mining or converting products for sale or resale; (iv)
226 materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible
227 personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a
228 publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale
229 or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements
230 thereof, shall be exempt if the preponderance of their use is ~~directly in the integrated process of~~
231 processing, manufacturing, refining, *recycling*, mining or converting products for sale or resale. The
232 provisions of this subsection do not apply to the drilling, extraction, refining, or processing of oil, gas,
233 natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable
234 to any machinery, tools, and equipment, or any other tangible personal property used by a public service
235 corporation in the generation of electric power, except for raw materials that are inputs to production of
236 electricity, including fuel.

237 3. Tangible personal property sold or leased to a public service corporation engaged in business as a
238 common carrier of property or passengers by railway, for use or consumption by such common carrier
239 directly in the rendition of its public service.

240 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in
241 interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying
242 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states
243 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.

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

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, and ending July 1, 2006, 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.

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

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

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

§ 58.1-3503. General classification of tangible personal property.

A. Tangible personal property is classified for valuation purposes according to the following separate

categories which are not to be considered separate classes for rate purposes:

1. Farm animals, except as exempted under § 58.1-3505.

2. Farm machinery, except as exempted under § 58.1-3505.

3. Automobiles, except those described in subdivisions 7, 8 and 9 of this subsection and in subdivision A 8 of § 58.1-3504, which shall be valued by means of a recognized pricing guide or if the model and year of the individual automobile are not listed in the recognized pricing guide, the individual vehicle may be valued on the basis of percentage or percentages of original cost. In using a recognized pricing guide, the commissioner shall use either of the following two methods. The commissioner may use all applicable adjustments in such guide to determine the value of each individual automobile, or alternatively, if the commissioner does not utilize all applicable adjustments in valuing each automobile, he shall use the base value specified in such guide which may be either average retail, wholesale, or loan value, so long as uniformly applied within classifications of property. If the model and year of the individual automobile are not listed in the recognized pricing guide, the taxpayer may present to the commissioner proof of the original cost, and the basis of the tax for purposes of the motor vehicle sales and use tax as described in § 58.1-2405 shall constitute proof of original cost. If such percentage or percentages of original cost do not accurately reflect fair market value, or if the taxpayer does not supply proof of original cost, then the commissioner may select another method which establishes fair market value.

4. Trucks of less than two tons, which may be valued by means of a recognized pricing guide or, if the model and year of the individual truck are not listed in the recognized pricing guide, on the basis of a percentage or percentages of original cost.

5. Trucks and other vehicles, as defined in § 46.2-100, except those described in subdivisions 4, and 6 through 10 of this subsection, which shall be valued by means of either a recognized pricing guide using the lowest value specified in such guide or a percentage or percentages of original cost.

6. Manufactured homes, as defined in § 36-85.3, which may be valued on the basis of square footage of living space.

7. Antique motor vehicles, as defined in § 46.2-100, which may be used for general transportation purposes as provided in subsection C of § 46.2-730.

8. Taxicabs.

9. Motor vehicles with specially designed equipment for use by the handicapped, which shall not be valued in relation to their initial cost, but by determining their actual market value if offered for sale on the open market.

10. Motorcycles, campers and other recreational vehicles, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

11. Boats weighing under five tons and boat trailers, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

12. Boats or watercraft weighing five tons or more, which shall be valued by means of a percentage or percentages of original cost.

13. Aircraft, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

14. Household goods and personal effects, except as exempted under § 58.1-3504.

15. Tangible personal property used in a research and development business, which shall be valued by means of a percentage or percentages of original cost.

16. Programmable computer equipment and peripherals used in business which shall be valued by means of a percentage or percentages of original cost to the taxpayer, or by such other method as may reasonably be expected to determine the actual fair market value.

17. All tangible personal property employed in a trade or business other than that described in subdivisions 1 through 16 of this subsection, which shall be valued by means of a percentage or percentages of original cost, *or by such other method as may reasonably be expected to determine the actual fair market value, to include an independent appraisal or the average of three written offers for the purchase of the property subject to taxation.*

18. All other tangible personal property.

B. Methods of valuing property may differ among the separate categories, so long as each method used is uniform within each category, is consistent with requirements of this section and may reasonably be expected to determine actual fair market value as determined by the commissioner of revenue or other assessing official; however, assessment ratios shall only be used with the concurrence of the local governing body. A commissioner of revenue shall upon request take into account the condition of the property. The term "condition of the property" includes, but is not limited to, technological obsolescence of property where technological obsolescence is an appropriate factor for valuing such property. The commissioner of revenue shall make available to taxpayers on request a reasonable description of his valuation methods. Such commissioner, or other assessing officer, or his authorized agent, when using a recognized pricing guide as provided for in this section, may automatically extend the assessment if the

pricing information is stored in a computer. *If petitioned in writing, the commissioner of revenue shall consider, in his determination of fair market value, an independent appraisal or the average of three written offers for the purchase of the property subject to taxation.*

§ 58.1-3507. Certain machinery and tools segregated for local taxation only; notice prior to change in valuation, hearing.

A. Machinery and tools, except machinery and equipment used by farm wineries as defined in § 4.1-100, used in a manufacturing, mining, *recycling*, water well drilling, processing or reprocessing, radio or television broadcasting, dairy, dry cleaning or laundry business shall be listed and are hereby segregated as a class of tangible personal property separate from all other classes of property and shall be subject to local taxation only. The rate of tax imposed by a county, city or town on such machinery and tools shall not exceed the rate imposed upon the general class of tangible personal property.

B. Machinery and tools segregated for local taxation pursuant to subsection A, other than energy conservation equipment of manufacturers, shall be valued by means of depreciated cost or a percentage or percentages of original total capitalized cost excluding capitalized interest.

Whenever the commissioner of the revenue proposes to change the means of valuing machinery and tools, such proposed change shall be published in a newspaper having general circulation in the affected locality at least 30 days before the proposed change would take effect and the citizens of the locality shall be allowed to submit written comments, during the 30-day period, to the commissioner of the revenue regarding the proposed change.

C. All motor vehicles which are registered pursuant to § 46.2-600 with the Department of Motor Vehicles and owned by persons engaged in those businesses set forth in subsection A shall be taxed as tangible personal property by the county, city or town in accordance with the provisions of this chapter. All other motor vehicles and delivery equipment owned by persons engaged in those businesses set forth in subsection A shall be included in and taxed as machinery and tools.

D. *Methods of valuing property may differ among the separate categories, so long as each method used is uniform within each category, is consistent with requirements of this section and may reasonably be expected to determine actual fair market value as determined by the commissioner of revenue or other assessing official; however, assessment ratios shall only be used with the concurrence of the local governing body. A commissioner of revenue shall upon request take into account the condition of the property. The term "condition of the property" includes, but is not limited to, technological obsolescence of property where technological obsolescence is an appropriate factor for valuing such property. The term "technological obsolescence" shall include all equipment that has been idle, operating less than 1% of the available production time for the location, for more than one year. The commissioner of revenue shall make available to taxpayers upon request a reasonable description of his valuation methods. Such commissioner, or other assessing officer, or his authorized agent, when using a recognized pricing guide, may automatically extend the assessment if the pricing information is stored in a computer. Absent a recognized pricing guide, if petitioned in writing, the commissioner of revenue shall consider in his determination of fair market value an independent appraisal or the average of three written offers for the purchase of the property subject to taxation.*

§ 58.1-3660. Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation.

Effective July 1, 2006, new investments in certified pollution control equipment and facilities used for manufacturing, mining, processing or reprocessing, or in a dairy shall be exempt from state and local taxation and shall remain a separate class of exempt property. Between July 1, 2006, and June 30, 2010, each local government shall reduce its existing assessments on this class of property for manufacturing, mining, processing or reprocessing and dairy by one-fifth. The Commonwealth shall reimburse each local government from the General Fund an equivalent sum during this transition period to end on June 30, 2010.

B. As used in this section:

"Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, *landfill gas, natural gas recovery from waste*, or fuel, whether or not such property has been certified to the Department of Taxation by a

428 state certifying authority.

429 "State certifying authority" shall mean the State Water Control Board, for water pollution; the State
430 Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for coal,
431 oil, and gas production, including gas, natural gas, *landfill gas*, and coalbed methane gas; and the
432 Virginia Waste Management Board, for waste disposal facilities, and shall include any interstate agency
433 authorized to act in place of a certifying authority of the Commonwealth.

434 **2. That the provisions of subsection D of § 58.1-3507 of the Code of Virginia, as amended and**
435 **reenacted by this act, are declaratory of existing law.**